12–8–93
Vol. 58 No. 234
Pages 64455–64668

Federal Register

Wednesday
December 8, 1993

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register

Vol. 58, No. 234

Wednesday, December 8, 1993

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers and **Federal Register** finding aids is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

6634.....64667

7 CFR

1951.....64455

10 CFR

Proposed Rules:

710.....64509

12 CFR

303.....64455
332.....64458
333.....64460
362.....64462

Proposed Rules:

330.....64521

14 CFR

39.....64487
71.....64488

Proposed Rules:

71.....64525

21 CFR

5.....64489

Proposed Rules:

179.....64526

30 CFR

Proposed Rules:

934.....64528
944.....64529

40 CFR

81.....64490
180 (4 documents).....64492, 64493, 64495, 64496
228.....64497

Proposed Rules:

52.....64530
180 (2 documents).....64536, 64538
300.....64539

43 CFR

Public Land Orders:

7012.....64498
7014.....64498
7015.....64499
7016.....64499

45 CFR

400.....64499

47 CFR

Proposed Rules:

15.....64541
76.....64541

Rules and Regulations

Federal Register
Vol. 58, No. 234
Wednesday, December 8, 1993

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR PART 1951

RIN 0575-AA39

NonProgram (NP) Loans—Corrections

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule; correction.

SUMMARY: The Farmers Home Administration (FmHA) corrects errors on the final rule published on October 12, 1993, (58 FR 52644—52656). The intended effect of this action is to correct errors and omissions in the final rule.

EFFECTIVE DATE: November 12, 1993.

FOR FURTHER INFORMATION CONTACT: Jean F. Leavitt, Senior Loan Specialist, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, South Agriculture Building, room 5309, Washington, DC 20250, telephone: (202) 720-1452.

SUPPLEMENTARY INFORMATION: See the rulemaking action published on October 12, 1993, (58 FR 52644—52656). FmHA Instruction 1951-S, "Farmer Programs Account Servicing Policies", is herein amended to correct omissions from the text.

Therefore, the final rule published on October 12, 1993 (58 FR 52644) amending Chapter XVIII, Title 7, Code of Federal Regulations is corrected as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart S—Farmer Programs Account Servicing Policies

2. On page 52651, in the third column, in § 1951.911, paragraph (a)(7)(iii) is corrected to read as follows:

§ 1951.911 Preservation Loan Service Programs.

(a) * * *

(7) * * *

(iii) The property will be offered on eligible terms [if the purchaser is eligible in accordance with subpart A of Part 1943 of this chapter) and a credit sale processed in accordance with Subpart C of Part 1955 of this chapter or NP terms in accordance with Subpart J of Part 1951 of this chapter. The interest rate will be the current rate set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

* * * * *

Dated: November 19, 1993.

Bob Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 93-29879 Filed 12-7-93; 8:45 am]

BILLING CODE 3410-07-U

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

RIN 3064-AB19

Applications, Requests, Submittals, Delegations of Authority, and Notices Required to be Filed by Statute or Regulation

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations concerning applications and notices by savings associations. The amendments conform the definitions of "significant risk" and "equity security" to the definitions of those terms found in the FDIC's regulations entitled, "Activities and Investments of Insured State Banks", and allow insured state savings associations to conduct activities and make investments without the FDIC's prior approval provided that the activities and/or investments were found to be permissible for federal savings associations under an order or a written interpretation issued by the Office of Thrift Supervision. This change also places insured state savings associations on a par with the treatment accorded insured state banks under FDIC's regulations.

EFFECTIVE DATE: The final amendment is effective December 8, 1993.

FOR FURTHER INFORMATION CONTACT: Pamela E.F. LeCren, Senior Counsel, (202) 898-3730, Legal Division, FDIC, 550 17th Street, NW., Washington, DC 20429 or Curtis L. Vaughn, Examination Specialist, (202) 898-6759, Division of Supervision, FDIC, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Sections 18(m) and 28 were added to the Federal Deposit Insurance Act (FDI Act, 12 U.S.C. 1831e, 1828(m)) on August 8, 1989 as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA, Pub. L. 101-73, 103 Stat. 183). In brief, section 18(m) provides that, with certain exceptions, any insured savings association must notify the FDIC and the Office of Thrift Supervision (OTS) at least 30 days prior to establishing or acquiring a subsidiary and at least 30 days prior to electing to conduct a new activity through a subsidiary. The FDIC is also authorized to prohibit by regulation or order any specific activity, act or practice conducted by an insured savings association that the FDIC determines will pose a serious threat to either the Bank Insurance Fund (BIF) or the Savings Association Insurance Fund (SAIF). Section 28 of the FDI Act deals, in part, with the activities and equity investments of state chartered savings associations and the investment by state or federal savings associations in "junk bonds". In brief, state savings associations are prohibited from engaging as principal after January 1, 1990 in any activity of a type or in an amount that is not permissible for federal savings associations unless the FDIC determines that the activity poses no significant risk to the affected deposit insurance fund and the savings association is, and continues to be, in compliance with the fully phased-in capital standards prescribed for savings associations under section 5(t) of the Home Owners' Loan Act (HOLA, 12 U.S.C. 1464(t)). State savings associations are also limited to making equity investments that are permissible for federal savings associations. Equity investments in service corporations that would otherwise be impermissible for

federal savings associations can be made if a state savings association meets its fully phased-in capital requirements and the FDIC finds that the investment will not pose a significant risk to the affected deposit insurance fund based either on the activity to be conducted by the service corporation or the amount to be invested

On December 12, 1989 the FDIC's Board of Directors adopted interim final regulations implementing sections 18(m) and 28 of the FDI Act, new § 303.13 (12 CFR 303.13) (54 FR 53540, December 29, 1989). Those regulations were subsequently adopted in final on September 11, 1990 (55 FR 38037, September 17, 1990). Among other things, the final regulations:

(1) Look to statute, OTS regulations, and official OTS regulatory and thrift bulletins to determine what activities and investments are permissible for federal savings associations (§ 303.13(b)(1)), (d)(1), (d)(2);

(2) Define the term "equity security" to mean "any stock, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, or voting-trust certificate; any security immediately convertible at the option of the holder without payment of substantial additional consideration into such a security; any security carrying any warrant or right to subscribe to or purchase any such security; and any certificate of interest or participation in, temporary or interim certificate for, or receipt for any of the foregoing (§ 303.13(a)(6))"; and

(3) Indicate that a "significant risk" is considered to be present "whenever it is likely that any insurance fund administered by the FDIC may suffer any loss whatever" (§ 303.13(a)(9)).

In November, 1992, the FDIC adopted final regulations governing the equity investments of insured state banks. (12 CFR part 362, 57 FR 53213, November 9, 1992). Part 362 implements section 24 of the FDI Act (12 U.S.C. 1831a) as added by the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA, Pub. L. 102–242, 105 Stat. 2236). Section 24 of the FDI Act, which governs the activities and equity investments of insured state banks, is very similar to section 28 of the FDI Act and was in many ways modeled after section 28. In brief, subject to certain statutory exceptions, section 24 prohibits insured state banks and their majority owned subsidiaries from engaging as principal in activities that are not permissible for a national bank or a subsidiary of a national bank unless the state bank meets its capital requirements and the FDIC determines that the activity does not pose a significant risk to the deposit insurance fund. Similarly, insured state banks may not make any equity investments that are not permissible for national banks unless those investments are excepted under the statute.

Part 362 as adopted in final by the FDIC differs in a number of ways from § 303.13. To some extent, the differences result from differences in the statutory language of the two underlying provisions. Other differences are not required by statute. On May 3, 1993, the FDIC requested comment on whether § 303.13 should be amended to conform to part 362 to the extent that the language of the two statutory provisions does not bar such a change being made. Three differences between part 362 and § 303.13 were identified: the definition of equity security, the definition of significant risk, and what constitutes evidence of what is a permissible activity or equity investment for a federal savings association.

As indicated above, § 303.13 looks to statute, OTS regulations, and OTS regulatory and thrift bulletins to determine what is permissible for a federal savings association. Part 362 on the other hand provides that any investment authorized for national banks under the National Bank Act (12 U.S.C. 21 et seq.) or any other statute will be considered permissible for a national bank. What is more, investments expressly recognized as permissible in regulations, official bulletins or circulars issued by the Office of the Comptroller of the Currency (OCC) or any order or interpretation issued in writing by the OCC will be accepted as permissible for state banks. The preamble accompanying part 362 when the regulation was adopted in final indicated that:

> Written staff opinions will be considered to evidence the position of the Office of the Comptroller of the Currency so long as the opinion is considered to be valid by the Office of the Comptroller of the Currency. Thus an opinion will not be recognized if it is not the current opinion of the Comptroller's Office, i.e., it is no longer considered valid, the opinion is overruled by the Office of the Comptroller of the Currency, or the opinion is found by a court of law to be incorrect. Even though staff opinions are not necessarily binding on the Comptroller of the Currency, the FDIC is satisfied that they embody the current opinion of the Office of the Comptroller of the Currency and that to not recognize them would in fact unnecessarily put state banks at a disadvantage. State banks should note that the FDIC will generally expect any conditions or restrictions set out in the Comptroller of the Currency's regulations, bulletins, circulars, and staff opinions to be met if the equity investment is to be considered permissible under part 362 when made by state banks. (57 FR 53219, November 9, 1992).

Thus, under § 303.13 as originally adopted in final, a state savings association could not look to any OTS order or written interpretation as a basis for determining that a particular activity or investment is permissible for a federal savings association, whereas a state bank may take orders and written interpretations into account when determining what is permissible for a national bank.

The definitions of "equity security" as contained in part 362 and § 303.13 are identical with one exception. Under part 362, adjustable rate preferred stock and money market auction rate preferred stock are excluded from the definition of equity security. Section 303.13 as originally adopted did not contain this exception. The following explanation for the exclusion appeared in the preamble accompanying part 362 when the regulation was adopted in final.

> The FDIC received 15 comments addressing the issue of whether the regulation should exclude from the definition of equity security investment grade preferred stock and other preferred stock issues that are very debt like. The comments focused on two categories of preferred stock, money market preferred stock and adjustable rate preferred stock. Adjustable rate preferred stock refers to shares for which dividends are established contractually by a formula in relation to Treasury rates or other readily available interest rate levels. Money market preferred stock refers to those issues in which dividends are established through a periodic auction process that establishes yields in relation to short term rates paid on commercial paper issued by the same or a similar company. Dividends are not declared by the issuer's board and the credit quality of the issuer determines the value of the stock. Money market preferred shares are sold at auction rather than on a national securities exchange.
>
> The FDIC agrees after reviewing the comments that money market (auction rate) preferred stock and adjustable preferred stock are essentially substitutes for money market investments such as commercial paper and are closer in their characteristics to debt than to equity. The final regulation therefore has been amended to specifically exclude money market preferred stock and adjustable preferred stock from the definition of equity investment. As a result, such investments are not subject to the provisions of § 362.3(a) of the final regulation. Investing in such instruments will be an "activity" for the purposes of section 24. Whether or not a state bank may continue to make such investments after December 19, 1992 will depend, among

other things, on whether a national bank could make a similar investment. (57 FR 53218–19, November 9, 1992).

Thus, for the purposes of part 362, money market preferred stock and adjustable rate preferred stock are not considered to be equity securities. If a national bank could not engage in the activity of investing in such instruments, a state bank could possibly do so provided that the FDIC determines that the investment will not pose a significant risk to the fund and provided that the state bank meets its capital requirements. Under § 303.13 as currently worded, money market preferred stock and adjustable rate preferred stock are considered to be equity securities. If a federal savings association cannot invest in such instruments, a state savings association simply may not do so.

Finally, under § 303.13 as currently worded, "significant risk" is present whenever it is likely that any insurance fund administered by the FDIC may suffer any loss whatever. Under part 362, significant risk to the deposit insurance fund is understood to be present whenever there is a high probability that any insurance fund administered by the FDIC may suffer a loss. The definition of significant risk as originally proposed for the purposes of part 362 was identical to the language presently found in § 303.13. As a result of concerns expressed during the public comment period that the definition did not take into account the plain meaning of the word significant and concerns that any investment made by a bank could lead to some loss, the language in part 362 was modified slightly. The purpose of the modification was to "remove the implication that because an investment or activity cannot be said to be "riskless" under all circumstances the FDIC will determine that the investment or activity will pose a significant risk of loss to the fund". "The emphasis is properly whether there is a high degree of likelihood, under all of the circumstances, that an investment or activity by a particular bank, or by banks in general in a given market or region, may ultimately produce a loss to either of the funds." (57 FR 53220, November 9, 1992).

As indicated above, the FDIC proposed amending § 303.13 to conform the definitions of significant risk and equity security to those found in part 362 and proposed to allow state savings associations (like their counterpart state banks) to look to orders and written interpretations in determining what activities and investments require the FDIC's prior approval. Comment was invited on whether it is appropriate to make the above described changes and whether any other differences between § 303.13 and part 362 should be eliminated. Commentors were reminded, that when responding to this question, they should keep in mind that the FDIC is constrained by the statutory language of section 24 and section 28 of the FDI Act and that the FDIC may not be able to amend the regulations so that they are identical.

The FDIC received two comments in response to the proposed amendment; one in writing and one by telephone. The written comment was from a national trade association which represents more than 2,000 savings and community financial institutions whose total assets exceed $800 billion. The trade association supported the amendment because the changes would be beneficial to state savings associations. The comment specifically indicated that § 303.13 and part 362 should be as similar as possible; orders and interpretations are appropriately relied upon as evidence of what is permissible for a federal savings association as orders and interpretations represent the ongoing refinement of the application of statute and regulations; and that the change in the definition of significant risk is important in order to ensure that the standard is not overly broad. The telephone comment, which came from a staff member of the Senate Banking Committee, objected to the proposed change in the definition of significant risk. The commentor indicated that, in his opinion, the change would inappropriately lower the standard which the statute requires the FDIC to employ in determining whether a particular activity presents a significant risk to the fund.

After considering the comments, the Board of Directors has determined to adopt the proposed amendment in final without any change. It is the Board's considered opinion that the change in the definition of significant risk to the fund does not represent a substantive change from the existing definition nor that the change lowers the standard under which the FDIC is to determine whether a particular activity may be conducted by a state savings association. As indicated in the preamble accompanying the proposed amendment, the language change is simply designed to alleviate fears that the regulation establishes a standard that is impossible to meet because no activity can be said to be totally riskless under all circumstances. The emphasis in the FDIC's view is, rather, whether the probability is high that a loss to the fund may occur. The loss itself need not be significant in amount in comparison to the fund.

The final amendment is effective immediately upon publication in the Federal Register. The requirement under the Administrative Procedure Act (5 U.S.C. 553) to publish a substantive rule not less than 30 days prior to its effective date is being waived pursuant to the authority of section 553(d)(1) which allows such waiver in the case of a substantive rule which relieves a restriction. The exception is applicable in that the amendments alleviate the need for state savings associations to in some instances file an application with the FDIC prior to conducting certain activities. Additionally, the amendments will allow certain equity investments that may not have been permissible prior to the amendments.

Regulatory Flexibility Analysis

The final amendment does not create or add to any existing recordkeeping or reporting requirement. Nor does the amendment require any state savings association to hire additional specialized personnel in order to comply with the requirements of § 303.13, establish any computer tracking system, or take any other measure for the purposes of compliance that would be burdensome on savings associations in general. Therefore, the FDIC does not anticipate that the final amendment will cause any institution, regardless of size, any additional costs. As that is the case, it is not likely that the final amendment will present an economic burden on small institutions as a result of such institutions being more likely to incur an added economic burden in attempting to comply with the regulation. The final amendment will in fact in some instances eliminate the need for state savings associations to seek the FDIC's approval before conducting certain activities and in some instances will afford state savings associations greater flexibility in their investments than presently afforded under the regulation. The FDIC's Board of Directors therefore does hereby certify pursuant to 5 U.S.C. 605 that the final amendment does not have a significant economic impact on a significant number of small entities.

List of Subjects in 12 CFR Part 303

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Insured depository institutions, Reporting and recordkeeping requirements, Savings associations.

In consideration of the foregoing, the FDIC hereby amends chapter III of title

12 of the Code of Federal Regulations by amending part 303 as follows:

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES REQUIRED TO BE FILED BY STATUTE OR REGULATION

1. The authority citation for part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817(j), 1818, 1819 ("Seventh" and "Tenth"), 1828, 1831(e), 1831(o); 15 U.S.C. 1607.

§ 303.13 [Amended]

2. Section 303.13(a)(6) is amended by adding "(other than adjustable rate preferred stock and money market (auction rate) preferred stock)" after the word "stock".

3. Section 303.13 is amended by revising paragraph (a)(9) to read as follows:

§ 303.13 Applications and notices by savings associations.

(a) * * *

(9) *A significant risk* is understood to be present whenever there is a high probability that any insurance fund administered by the FDIC may suffer a loss.

* * * * *

§ 303.13 [Amended]

4. Section 303.13(b)(1) introductory text is amended by removing the first sentence and adding in its place "After January 1, 1990, no state savings association may directly engage, other than as agent on behalf of its customers, in an activity that is not expressly authorized for federal savings associations by the Home Owners' Loan Act (12 U.S.C. 1461 et seq.) or any other statute, regulations issued by the Office of Thrift Supervision (OTS), official OTS Regulatory or Thrift Bulletins, or any order or interpretation issued in writing by OTS unless the state savings association obtains the approval of the FDIC."; and by removing "the Home Owners' Loan Act (HOLA)" where it appears in the second sentence and adding in its place "HOLA".

5. Section 303.13(d)(1) introductory text is amended by removing the first sentence and adding in its place "No state savings association may directly acquire or retain any equity investment after August 9, 1989 of a type or in an amount that is not expressly authorized for federal savings associations by HOLA, regulations issued by OTS, official OTS Regulatory or Thrift Bulletins, or any order or interpretation issued in writing by OTS.".

6. Section 303.13(d)(2)(i) is amended by removing "statute or by regulation adopted by OTS, or an official OTS Regulatory or Thrift Bulletin interpreting such statutes and regulations" where it appears in the first sentence and adding the following, "HOLA or any other statute, regulations issued by OTS, official OTS Regulatory or Thrift Bulletins, or any order or interpretation issued in writing by OTS".

By Order of the Board of Directors.

Dated at Washington, DC this 30th day of November, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93-29776 Filed 12-7-93; 8:45 am]

BILLING CODE 6714-01-P

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12 CFR Part 332

RIN 3064-AA01

Powers Inconsistent With Purposes of Federal Deposit Insurance Law

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is removing its regulations which, subject to certain exceptions, prohibit a state nonmember insured bank from doing a surety business; insuring the fidelity of others; engaging in the insuring, guaranteeing or certifying of titles to real estate; and guaranteeing the obligations of others. This action is being taken as, in the FDIC's opinion, new section 24 of the Federal Deposit Insurance Act (FDI Act) effectively covers this area. That section of the FDI Act limits the "as principal" activities of insured state banks to the activities permissible for national banks unless a state bank obtains the FDIC's consent.

EFFECTIVE DATE: The final regulation is effective December 8, 1993.

FOR FURTHER INFORMATION CONTACT: Curtis L. Vaughn, Examination Specialist, (202) 898-6759, Shirley K. Basse, Review Examiner, (202) 898-6815, or Cheryl A. Steffen, Review Examiner, (202) 898-6768, Division of Supervision, FDIC, 550 17th Street, NW., Washington, DC, 20429; Pamela E.F. LeCren, Senior Counsel, (202) 898-3730, or Grovetta N. Gardineer, Senior Attorney, (202) 898-3905, Legal Division, FDIC, 550 17th Street, NW., Washington, DC, 20429; or David K. Horne, Financial Economist, (202) 898-3981, Division of Research and Statistics, FDIC, 550 17th Street, NW., Washington, DC, 20429.

SUPPLEMENTARY INFORMATION: Part 332 of the FDIC's regulations (12 CFR part 332), "Powers Inconsistent with Purposes of Federal Deposit Insurance Law", prohibits any state nonmember insured bank (except a District bank) from exercising or assuming the power to:

(1) Do a surety business;

(2) Insure the fidelity of others;

(3) Engage in the insuring, guaranteeing or certifying of titles to real estate; or

(4) Guarantee or become surety upon the obligations of others except as provided in § 347.3(c)(1) of the FDIC's regulations (12 CFR 347.3(c)(1)).

Section 347.3(c)(1) provides that a bank's foreign branches may guarantee customer's debts or otherwise agree for their benefit to make payments on the occurrence of readily ascertainable events if the guarantee or agreement specifies the branch's maximum monetary liability. The guarantee or agreement shall be combined with all standby letters of credit and loans for purposes of applying any limitation on loans that the bank may make.

The general prohibition found in part 332 does not apply to acceptances, endorsements, or letters of credit made or issued in the usual course of the banking business. Nor does the prohibition apply in the case of check guaranty card programs, customer-sponsored credit card programs, and similar arrangements in which a bank undertakes to guarantee the obligations of individuals who are its retail banking deposit customers provided that the bank establishes the creditworthiness of the individual before undertaking to guarantee his/her obligations. Additionally, any such arrangement to which any of the bank's principal shareholders, directors, or executive officers are a party must be in compliance with applicable provisions of Federal Reserve Board Regulation O (12 CFR part 215) which pertains to loans to insiders.

Over the years the FDIC has recognized two interpretive exceptions to the general prohibition on a bank acting as a surety or guaranteeing the obligations of others:

(1) If the bank has a segregated deposit sufficient in amount to cover the bank's potential liability; or

(2) If the bank has a substantial interest in the performance of the transaction.

Part 332 was adopted by the FDIC in 1946 and has remained essentially unchanged since then except for the addition of the language allowing for check guaranty programs and customer-sponsored credit card programs. Because of recent legislative changes,

the FDIC proposed to eliminate part 332 (58 FR 6448, January 29, 1993).

On December 19, 1991, President George Bush signed into law the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA, Pub. L. 102–242, 105 Stat. 2236). Section 303 of FDICIA added section 24 to the Federal Deposit Insurance Act, "Activities of Insured State Banks" (FDI Act, 12 U.S.C. 1831a). With certain exceptions, section 24 of the FDI Act limits the activities and equity investments of state chartered insured banks to the activities and equity investments that are permissible for national banks. The portions of section 24 dealing with equity investments were effective upon enactment, December 19, 1991. The remaining portions of section 24 dealing with activities of insured state banks and their majority-owned subsidiaries became effective December 19, 1992.

Section 24(a) (12 U.S.C. 1831a(a)) provides that after December 19, 1992, no insured state bank may engage as principal in any type of activity that is not permissible for a national bank unless the bank meets, and continues to meet, the applicable capital standards prescribed by the appropriate federal banking agency and the FDIC determines that the activity would not pose a significant risk to the deposit insurance fund of which the bank is a member.

The FDIC is precluded by section 24 from allowing any insured state bank to underwrite insurance if a national bank could not do so. This general prohibition does not apply, however, in the case of: (1) Any insured state bank, and any subsidiary of an insured state bank, that provided insurance on or before September 30, 1991 which was reinsured in whole or in part by the Federal Crop Insurance Corporation (see section 24(b)(2)) or (2) any well-capitalized bank that was lawfully providing insurance as principal on November 21, 1991 (see section 24(d)(2)(B)). The insurance underwriting activities of a bank covered by paragraph (d)(2)(B) of section 24 (12 U.S.C. 1831a(d)(2)(B)) are limited under the exception, however, to providing insurance of the same type to residents of the state in which the bank was underwriting insurance on the relevant date, individuals employed in that state, and any person to whom the bank has provided insurance without interruption since such person resided in or was employed in that state.

The FDIC adopted final regulations (12 CFR part 362) implementing the equity investment restrictions of section 24 on October 27, 1992 (57 FR 53213, November 9, 1992) and is today elsewhere in the **Federal Register** adopting a final amendment to part 362 which implements the activity restrictions of section 24.

In proposing to eliminate part 332 from the FDIC's regulations the Board of Directors noted that due to the statutory prohibitions contained in section 24 pertaining to insurance underwriting there may no longer be a need to retain part 332 as part of the FDIC's regulations. This may be especially true since the FDIC has been given a specific statutory charge to review and approve any as principal activity that an insured state bank may wish to conduct if that activity is not permissible for a national bank. The preamble accompanying the proposal indicated that removing part 332 would eliminate the confusion that may otherwise be created as a result of any overlap between part 332 and section 24. The preamble went on to indicate that if part 332 is eliminated, the question of whether or not an insured state bank may conduct any of the activities presently listed in part 332 will be resolved under the provisions of section 24 and part 362.[1] If an activity is one that is not permissible for a national bank, the state bank will not be permitted to engage in the activity unless it meets its capital requirements and the FDIC finds that the activity will not pose a significant risk to the deposit insurance fund.

The Board of Directors was of the opinion that the removal of part 332 should not have an adverse effect on the deposit insurance fund. Comment was requested, however, as to whether there is the possibility that some activities currently prohibited by part 332 would not be subject to the FDIC's review under part 362 in which case the removal of part 332 would allow some activities to go forward which have been prohibited under the FDIC's regulations for many years. Although the FDIC asked for comment on this area, it was the FDIC's opinion at the time the proposal was published that that possibility is limited. For example: (1) National banks are permitted by regulations of the Office of the Comptroller of the Currency (OCC) to act as surety or guarantor of the obligations of others if the bank holds a segregated deposit or the bank has a substantial interest in the transaction, and (2) section 24 prohibits a state bank from insuring the fidelity of others (it is after all insurance underwriting) except to the extent that a national bank may be able to itself underwrite the fidelity of others. Lastly, the Board of Directors observed that to the extent that any gap would be created by removing Part 332, it is worthy of note that Congress did not itself opt to restrict state banks from engaging in activities that are permissible for national banks.[2]

The FDIC received four comments on the proposed removal of part 332. Two of the comments recommended that the FDIC adopt the proposal and voiced the opinion that the removal of part 332 from the FDIC's regulations would not create a regulatory gap which would endanger the deposit insurance funds. The remaining two comments objected to the removal of part 332. One of the latter specifically raised concerns about a bank underwriting title insurance. This comment indicated that removing part 332 would allow state banks to underwrite title insurance (if it is determined that a national bank may do so) and that that result is contrary to the policy followed by the FDIC for many years. This comment observed that the FDIC had not offered any justification for such a change in policy and indicated that certain risks would be posed to the deposit insurance funds if state banks are allowed to directly, or indirectly through a subsidiary, underwrite title insurance.

After carefully weighing the comments, the FDIC has decided to proceed with the removal of part 332 from the FDIC's regulations. In the Board's opinion, the adoption of section 24 of the FDI Act by the congress embodies a strong legislative intent that state banks should be able to engage in "as principal" activities that are permissible for a national bank, including underwriting title insurance if that activity is in fact authorized for national banks. Thus, the FDIC thinks that it is appropriate, given the enactment of section 24 of the FDI Act, to at least as a threshold matter establish consistency between the manner in which state and national banks are treated in so far as their activities are concerned. The FDIC does not feel that adopting this posture will expose the deposit insurance funds to undue risk. The agency retains the authority to prohibit or restrict any activity on a

[1] Insured state banks are reminded that the FDIC has adopted in final an amendment to part 362 elsewhere in today's **Federal Register**. That final amendment, among other things, carries over the exceptions from Part 332 pertaining to guarantees by foreign branches of U.S. banks and customer-sponsored credit card programs.

[2] The FDIC's authority to itself do so was not affected by section 24 of the FDI Act, however, as evidenced by paragraph (i) of section 24 which indicates that nothing in section 24 is to be construed as limiting the authority of the FDIC, or any other appropriate federal or state regulatory authority, to establish conditions or restriction that are more stringent than section 24.

case-by-case basis as appropriate if the circumstances warrant. If it is ultimately decided that national banks may underwrite title insurance, the FDIC will carefully monitor state bank involvement in title insurance underwriting to determine whether those activities are presenting any risk to the funds. If that is the case, the agency will take appropriate action to address those concerns.

Waiver of Delayed Effective Date

The amendment is effective immediately upon publication in the **Federal Register**. The requirement under the Administrative Procedure Act (5 U.S.C. 553) to publish a substantive rule not less than 30 days prior to its effective date is being waived pursuant to the authority of section 553(d)(1) which allows such waiver in the case of an action which relieves a restriction.

Regulatory Flexibility Analysis

The Board of Directors has concluded that the final amendment will not impose a significant economic hardship on small institutions. The amendment does not establish any recordkeeping or reporting requirements that necessitate the expertise of specialized accountants, lawyers, or managers. The amendment in fact makes it easier for banks to comply with the FDIC's regulations. The Board of Directors therefore hereby certifies pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that the final amendment will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.).

List of Subjects in 12 CFR Part 332

Banks, banking.

In consideration of the foregoing, the FDIC, under the authority of 12 U.S.C. 1819, hereby amends chapter III, title 12 of the Code of Federal Regulations as follows:

PART 332—[REMOVED AND REVISED]

1. Part 332 is removed and reserved.

By Order of the Board of Directors.

Dated at Washington, DC this 30th day of November, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93–29775 Filed 12–7–93; 8:45 am]

BILLING CODE 6714–01–P

12 CFR Part 333

RIN 3064–AA55

Extension of Corporate Powers

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations on extension of corporate powers to remove a provision that makes certain prohibitions which are applicable to state chartered savings associations applicable to state banks that are members of the Savings Association Insurance Fund (SAIF). SAIF member state banks would thereafter be subject to the restrictions of FDIC regulations on activities and investments of insured state banks in lieu of the restrictions presently found in existing regulations on extension of corporate powers. The FDIC in a related rulemaking published elsewhere in today's **Federal Register** is amending its regulations which place restrictions on the activities and equity investments of insured state banks and their majority-owned subsidiaries. The effect of this amendment to the extension of corporate powers regulations is to treat SAIF member state banks and Bank Insurance Fund (BIF) member state banks the same rather than subject the former to any additional, or contrary, restrictions based on insurance fund membership.

EFFECTIVE DATE: The final regulation is effective December 8, 1993.

FOR FURTHER INFORMATION CONTACT: Curtis L. Vaughn, Examination Specialist, (202) 898–6759, Shirley K. Basse, Review Examiner, (202) 898–6815, or Cheryl A. Steffen, Review Examiner, (202) 898–6768, Division of Supervision, FDIC, 550 17th Street, NW., Washington, DC 20429; Pamela E.F. LeCren, Senior Counsel, (202) 898–3730, or Grovetta N. Gardineer, Senior Attorney, (202) 898–3905, Legal Division, FDIC, 550 17th Street, NW., Washington, DC 20429; or David K. Horne, Financial Economist, (202) 898–3981, Division of Research and Statistics, FDIC, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background

On April 30, 1991 the FDIC amended its regulations by adding a new § 333.3 to part 333, "Extension of Corporate Powers" (12 CFR 333.3) (56 FR 20528, May 6, 1991). That section:

(1) Caused state banks that are members of the Savings Association Insurance Fund (SAIF member state banks) to be subject to the conditions and restrictions regarding activities and equity investments to which state savings associations are subject pursuant to § 303.13 of the FDIC's regulations (12 CFR 303.13);

(2) Subjected SAIF member state banks to the loan to one borrower limits found in section 5(u) of the Home Owners' Loan Act (HOLA, 12 U.S.C. 5(u));

(3) Required SAIF member state banks to deduct from their capital any investments in a subsidiary if a savings association would be required to do so under section 5(t)(5) of HOLA (12 U.S.C. 1464(t)(5));

(4) Subjected SAIF member state banks to the additional restrictions on transactions with affiliates found in section 11 of HOLA (12 U.S.C. 1468);

(5) Required SAIF member state banks to provide the FDIC notice before acquiring or establishing a subsidiary or engaging in a new activity through an existing subsidiary (see § 303.13(f) of the FDIC's regulations (12 CFR 303.13(f)); and

(6) Required any savings association that converted to a SAIF member state bank to file a capital plan if upon conversion the bank did not meet the minimum capital requirements set out in part 325 of the FDIC's regulations (12 CFR part 325).

Section 303.13 was adopted by the FDIC on December 12, 1989 (54 FR 53540, December 29, 1989) in order to implement section 28 of of the FDI Act (12 U.S.C. 1831e) which placed certain prohibitions on the activities and equity investments of state savings associations. Section 28 was added to the FDI Act as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA, Pub. L. 101–73, 103 Stat. 183 (1989)). Section 28 of the FDI Act and § 303.13 of the FDIC's regulations (12 CFR 303.13) prohibit state chartered savings associations from acquiring or retaining any equity investment of a type or in an amount that is not permissible for a federal savings association. State savings associations are also prohibited from engaging as principal in any activity that is not permissible for a federal savings association unless the association meets its fully phased-in capital requirements and the FDIC determines that the activity will not pose a significant risk to the deposit insurance fund.

If a state savings association meets its fully phased-in capital requirements and the FDIC determines that there is not a significant risk to the deposit insurance fund, a state savings association may acquire or retain an

equity investment in a service corporation that would not be permissible for a federal savings association. Equity investments acquired prior to August 8, 1989 that are prohibited investments must be divested as quickly as prudently possible but in no event later than July 1, 1994. The FDIC may set conditions and restrictions governing the retention of the prohibited equity investments during the divestiture period.

The restrictions described above which are found in the various provisions of HOLA were added to federal statute by FIRREA as was the requirement that savings associations give the FDIC prior notice before acquiring or establishing a subsidiary or conducting new activities through a subsidiary (see section 18(m) of the FDI Act, 12 U.S.C. 1828(m)).

It was the determination of the FDIC's Board of Directors when § 333.3 was adopted that savings associations which convert to state chartered banks and retain their membership in SAIF should continue to be subject to the safeguards enacted by FIRREA. The action was found necessary by the Board of Directors to protect SAIF from harm in view of state laws which might be lax. At the same time, however, the Board of Directors indicated that it was not its intent to permanently establish two classes of state banks that would be treated differently based upon their membership in a particular deposit insurance fund. The FDIC subsequently undertook a review of the issue of expanded bank powers with the hopes of proposing a regulation applicable to all state banks. Before the FDIC could publish a proposal, however, Congress enacted the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA, Public Law 102–242, 105 Stat. 2236). Section 303 of FDICIA added section 24 to the Federal Deposit Insurance Act (FDI Act, 12 U.S.C. 1831a, "Activities of Insured State Banks"). With certain exceptions, section 24 of the FDI Act limits the activities and equity investments of state chartered insured banks to the activities and equity investments that are permissible for national banks.

The FDIC recently adopted a new part 362 of its regulations implementing the equity investment restrictions of section 24 (57 FR 53213, November 9, 1992) and is today, elsewhere in the **Federal Register**, publishing a final amendment to part 362 that would add a number of provisions to part 362 addressing the activities of insured state banks and their majority-owned subsidiaries. In light of the enactment of section 24 of the FDI Act, the FDIC amended § 333.3 to allow state banks to be governed by the equity investment provisions of that section and any regulations adopted by the FDIC pursuant thereto (57 FR 53211, November 9, 1992). That amendment did not address the issue of bank activities nor the other restrictions imposed by § 333.3 which are based primarily on sections of HOLA.

On January 29, 1993 (58 FR 6450) the FDIC proposed to amend part 333 by removing § 333.3 in its entirety. The following explanation was given for the proposal at the time it was published for comment. It was at that time (and still is) the FDIC's considered opinion that it was the intent of Congress to treat all banks alike regardless of which insurance fund they are a member. By removing § 333.3, the FDIC would be implementing that intent. As to the other restrictions that would be eliminated if § 333.3 is removed (i.e., those rooted in the provisions of HOLA and section 18(m) of the FDI Act) Congress could have imposed on all state banks a loan to one borrower limit, additional affiliate transactions restrictions, prior notice of the acquisition or establishment of any subsidiary, and capital deductions on investments in certain subsidiaries but did not do so when it enacted FDICIA. That Congress did not require that such restrictions be imposed does not preclude the FDIC from imposing those, or similar, restrictions, provided that there is a safety or soundness basis to do so. (In fact, when the FDIC proposed to amend part 362 of the FDIC's regulations, the proposal required banks to deduct their investments in subsidiaries in certain instances.) The preamble accompanying the proposal to delete § 333.3 in its entirety went on to indicate that the Board of Directors is presently of the opinion given the enactment of section 24 and the various regulatory reforms such as the prompt corrective action provisions of the FDI Act (12 U.S.C. 38) which were part of FDICIA, that removing the additional restrictions on SAIF member state banks should not pose a threat to the SAIF fund. In fact, SAIF member state banks can be expected to benefit from the amendment as it will alleviate an existing competitive disparity and remove certain additional compliance burdens.

The FDIC received four comments in response to the proposal all of which urged the FDIC to remove § 333.3 from the FDIC's regulations in its entirety. As all of the comments were favorable, the FDIC is adopting the proposal in final without any change. The final amendment is effective immediately upon publication in the **Federal Register**. The requirement under the Administrative Procedure Act (5 U.S.C. 553) to publish a substantive rule not less than 30 days prior to its effective date is being waived pursuant to the authority of section 553(d)(1) which allows such waiver in the case of a substantive rule which relieves a restriction.

Regulatory Flexibility Analysis

The Board of Directors has determined that the final amendment will not have a significant economic impact on a substantial number of small entities. The amendment will not necessitate the development of sophisticated recordkeeping and reporting systems by small institutions nor the expertise of specialized staff accountants, lawyers or managers that small institutions are less likely to have absent hiring additional employees or obtaining these services from outside vendors. On the contrary, the final amendment will relieve what may be perceived as a burden on SAIF member state banks (both large and small) in that they are currently subject to a different set of rules regarding their activities than that to which BIF member state banks are subject. As a result of that fact SAIF member state banks are currently subject to a number of additional restrictions and compliance burdens to which BIF member state banks are not subject. SAIF member state banks are presently required to comply with the most restrictive rule and therefore must determine which rule is in fact the more restrictive. This amendment relieves that burden and places SAIF member state banks on a par with BIF member state banks.

As the final amendment will not have a disparate economic impact on small institutions, the FDIC was not required to conduct a Regulatory Flexibility Act analysis. (See section 605 of the Regulatory Flexibility Act (5 U.S.C. 605)).

List of Subjects in 12 CFR Part 333

Banks, banking, Corporate powers, Trusts and trustees.

In consideration of the foregoing, the FDIC hereby amends chapter III, title 12 of the Code of Federal Regulations by amending part 333 as follows:

PART 333—EXTENSION OF CORPORATE POWERS

1. The authority citation for part 333 is revised to read as follows:

Authority: 12 U.S.C. 1816, 1818, 1819.

§ 333.3 [Removed]

2. Section 333.3 is removed.

By Order of the Board of Directors.

Dated at Washington, DC this 30th day of November, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93–29773 Filed 12–7–93; 8:45 am]

BILLING CODE 6714–01–P

12 CFR Part 362

RIN 3064–AA29

Activities and Investments of Insured State Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations governing the activities and investments of insured state banks. The final rule implements new section 24 of the Federal Deposit Insurance Act (FDI Act). Under the final rule, an insured state bank must obtain the FDIC's prior consent before directly, or indirectly through a majority-owned subsidiary, engaging "as principal" in any activity that is not permissible for a national bank unless one of the exceptions contained in the regulation applies. In addition to the exceptions to the general prohibition, the final rule sets out application procedures for requesting FDIC's consent; provides a phase-out period for activities which are not approved by the FDIC; sets out conditions that may be imposed in the FDIC's discretion when approving applications; and delegates the authority to act on applications to the Executive Director, Supervision and Resolutions, the Director of the Division of Supervision, and the Director's designee.

EFFECTIVE DATE: The final regulation is effective December 8, 1993.

FOR FURTHER INFORMATION CONTACT: Curtis L. Vaughn, Examination Specialist, (202) 898–6759, Shirley K. Basse, Review Examiner, (202) 898–6815, or Cheryl A. Steffen, Review Examiner, (202) 898–6768, Division of Supervision, FDIC, 550 17th Street, NW., Washington, DC 20429; Pamela E.F. LeCren, Senior Counsel, (202) 898–3730, Grovetta N. Gardineer, Senior Attorney, (202) 898–3905, Legal Division, FDIC, 550 17th Street, NW., Washington, DC 20429; or David K. Horne, Financial Economist, (202) 898–3981, Division of Research and Statistics, FDIC, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in the final rule has been reviewed and approved by the Office of Management and Budget pursuant the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Comments on the collection of information should be directed to: Office of Paperwork Reduction Project 3064–0111, Washington, DC 20503 with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, room F–453, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington DC 20429.

The collection of information in this regulation is found in §§ 362.4(d)(4)(ii) and (iii) and 362.4(d)(5)(ii) and takes the form of an application for consent to directly, or indirectly through a subsidiary, engage as principal in any activity that is not permissible for a national bank or a subsidiary of a national bank; an application for consent to continue an ongoing activity that is otherwise impermissible; and a notice of intent to either discontinue an ongoing activity that is being conducted through a subsidiary for which consent to continue the activity has been denied or, in the alternative, a plan covering the divestiture of the bank's equity investment in that subsidiary. The information will be used to fulfill the FDIC's responsibility under section 24 of the FDI Act to ensure that no insured state bank directly or indirectly engages as principal in any activity that is not permissible for a national bank unless that activity will not present a significant risk to the deposit insurance funds.

The estimated annual reporting burden for the collection of information requirement in the regulation is summarized as follows:

Application To Directly Engage as Principal in Activity Not Permissible for a National Bank

Number of Respondents: 390
Number of Responses Per Respondent: 1
Total Annual Responses: 390
Hours Per Response: 12
Total Annual Burden Hours: 4,680

Application To Indirectly Engage as Principal in Activity Not Permissible for a National Bank

Number of Respondents: 550
Number of Responses Per Respondent: 1
Total Annual Responses: 550
Hours Per Response: 10
Total Annual Burden Hours: 5,500

Application To Directly Continue Activity

Number of Respondents: 5
Number of Responses Per Respondent: 1
Total Annual Responses: 5
Hours Per Response: 12
Total Annual Burden Hours: 60

Application To Indirectly Continue Activity

Number of Respondents: 165
Number of Responses Per Respondent: 1
Total Annual Responses: 165
Hours Per Response: 6
Total Annual Burden Hours: 990

Divestiture Plan or Notice to Discontinue Indirect Activity for Which Continuation has Been Denied

Number of Respondents: 230
Number of Responses Per Respondent: 1
Total Annual Responses: 230
Hours Per Response: 6
Total Annual Burden Hours: 1380

Background

On December 19, 1991, the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA, Pub. L. No. 102–242, 105 Stat. 2236) was signed into law. Section 303 of FDICIA added section 24 to the Federal Deposit Insurance Corporation Act, "Activities of Insured State Banks" (FDI Act, 12 U.S.C. 1831a). With certain exceptions, section 24 of the FDI Act limits the activities and equity investments of state chartered insured banks to activities and equity investments that are permissible for national banks. On July 9, 1992, the FDIC's Board of Directors sought comment for thirty days on a proposed rule implementing the equity investment restrictions of section 24 (proposed part 362, 57 FR 30435). Part 362 was adopted in final form on October 27, 1992 (57 FR 53213, November 9, 1992).

On January 29, 1993, the Board of Directors proposed an amendment to part 362 adding new provisions which would address "activities" of insured state banks and their majority-owned subsidiaries. The proposal was published for a sixty-day comment period which closed on March 30, 1993. Seventy-five comments were received. After carefully considering the comments, the Board of Directors has determined to adopt the proposed amendments with a number of changes. A summary of the comments as well as a detailed description of section 24 of the FDI Act and a discussion of the final amendment to part 362 is set out below.

At the same time the FDIC proposed to add new part 362 to its regulations, the FDIC proposed to amend § 333.3 of the FDIC's regulations, "Savings Association Insurance Fund (SAIF)

member state banks formerly savings associations", (12 CFR 333.3) (57 FR 30433, July 9, 1992). That proposal sought comment on amending § 333.3 so as to relieve SAIF member state banks from the restrictions of § 333.3 insofar as that regulation made SAIF member state banks subject to the equity investment restrictions applicable to savings associations found in § 303.13 of the FDIC's regulations (12 CFR 303.13). The FDIC sought comment on eliminating what was then a disparate treatment among banks as to their equity investments based upon deposit insurance fund membership. The proposed amendment to § 333.3 was adopted in final without any changes. (57 FR 53211, November 9, 1992).

Other portions of § 333.3 which concerned "activities" of SAIF member state banks and which addresses issues such as loan to one borrower limits, transactions with affiliates, and investments in "junk bonds", were not affected by that amendment. The Board of Directors subsequently sought comment on whether to eliminate § 333.3 in its entirety indicating that to do so would: (1) Cause SAIF member state banks to be treated in the same fashion as any other insured state bank insofar as equity investments and activities are concerned (i.e., such banks would only be subject to part 362) and (2) relieve SAIF member state banks from other restrictions found in § 333.3 which parallel restrictions to which savings associations are subject. That proposal was published for a sixty-day comment period which closed on March 30, 1993 (58 FR 6450, January 29, 1993). A full discussion of that proposal, the comments received in response to the proposal, and the FDIC's action regarding the proposal can be found elsewhere in today's **Federal Register**.

At the same time the Board of Directors proposed to amend part 362 and eliminate § 333.3 of the FDIC's regulations, the Board of Directors proposed removing part 332 from the FDIC's regulations (12 CFR Part 332, "Powers Inconsistent With Purposes of Federal Deposit Insurance Law")(58 FR 6448, January 29, 1993). Part 332 prohibits any state nonmember insured bank (except a district bank) from doing a surety business, insuring the fidelity of others, engaging in the insuring, guaranteeing or certifying of titles to real estate, or guaranteeing or becoming surety upon the obligations of others except as provided in § 347.3(c)(1) of FDIC's regulations (12 CFR 347.3(c)(1)). The limitations do not apply to acceptances, endorsements, or letter of credit made or issued in the usual course of the banking business and do not apply in the case of check guaranty card programs or customer-sponsored credit card programs and similar arrangements provided that certain restrictions are met. In addition, the FDIC has over the years recognized on an interpretive basis a number of other exceptions to the general prohibition on acting as guarantee or surety. If part 332 were to be removed, the provisions of part 362 would govern whether or not a state nonmember insured bank is permitted to enter into any of the activities presently covered by part 332. A full discussion of the comments received on that proposal and the Board's action with respect to those comments can be found elsewhere in today's **Federal Register**.

Description of Section 24 of FDI Act

As indicated above, with certain exceptions, section 24 of the FDI Act as added by FDICIA limits the activities and equity investments of state chartered insured banks to activities and equity investments that are permissible for national banks. The provisions of section 24 which are pertinent to "activities" of state banks and their majority-owned subsidiaries are summarized below.

Section 24(a) provides that after December 19, 1992, no insured state bank may engage as principal in any type of activity that is not permissible for a national bank unless the bank meets, and continues to meet, the applicable capital standards prescribed by the appropriate federal banking agency and the FDIC determines that the activity would not pose a significant risk to the deposit insurance fund of which the bank is a member.

The FDIC is precluded under the statute from allowing any insured state bank to underwrite insurance if a national bank could not do so. This general prohibition does not apply, however, in the case of: (1) Any insured state bank, and any subsidiary of an insured state bank, that provided insurance on or before September 30, 1991 which was reinsured in whole or in part by the Federal Crop Insurance Corporation (see section 24(b)(2)), (2) any well-capitalized bank and/or its subsidiary which was lawfully providing insurance in a state as principal on November 21, 1991 (see section 24(d)(2)(B)), and (3) any subsidiary of an insured state bank that provides title insurance if the insured state bank was required before June 1, 1991 to provide title insurance as a condition of the bank's initial chartering under state law and control of the insured state bank has not changed since that date (see section 24(d)(2)(C)). The insurance underwriting activities of a bank or subsidiary covered by paragraph (d)(2)(B) of section 24 are limited under the exception to providing insurance of the same type to residents of the state in which the bank was underwriting insurance on the relevant date, individuals employed in that state, and any person to whom the bank has provided insurance without interruption since such person resided in, or was employed in, that state.

Paragraph (d)(1), "Subsidiaries of Insured State Banks—In General", provides that after December 19, 1992, a subsidiary of an insured state bank may not engage as principal in any type of activity that is not permissible for a subsidiary of a national bank unless the bank meets, and continues to meet, the applicable capital standards prescribed by the appropriate federal banking agency and the FDIC determines that the activity will not pose a significant risk to the fund. As directed by paragraph (d)(2)(A), the FDIC cannot allow any subsidiary of an insured state bank to engage in any insurance underwriting activity that is not permissible for a national bank and which is otherwise not excepted by section 24. As indicated above, paragraph (d)(2)(B) of section 24 provides an exception for the retention of an equity interest in a subsidiary that was engaged in insurance activities "as principal" on November 21, 1991 and provides an exception for certain title insurance subsidiaries.

Paragraph (e) of section 24 indicates that nothing in section 24 shall be construed as prohibiting an insured state bank in Massachusetts, New York or Connecticut from selling or underwriting savings bank life insurance or owning stock in a savings bank life insurance company provided that consumer disclosures are made.

Section 24(g) grants the FDIC the authority to make determinations under section 24 by regulation or order and section 24(i) indicates that nothing in section 24 shall be construed as limiting the authority of the FDIC to impose more stringent restrictions than those set out in section 24.

Overall Comment Summary

The FDIC received 75 comments in response to the proposal. A substantial portion of the comments focused on issues such as the definition of a "bona fide subsidiary", the proposed transaction restrictions, the proposed disclosure requirements, and the capital implications of the regulation. Overall, the comments were critical of the bona fide subsidiary definition on the grounds that the definition was overly restrictive and would only create added

costs. Similar objections were raised with respect to the proposed definition of the term "department". The provision indicating that approvals for a subsidiary to conduct otherwise impermissible activities would be conditioned upon the subsidiary meeting the definition of a bona fide subsidiary, and the provision indicating that otherwise impermissible activities which are approved for the bank directly must be conducted in a "department" of the bank, were equally criticized. The main theme of these comments was that the conditions should only be imposed, if at all, on a case-by-case basis. Likewise, many comments objected to the proposed prohibition on an insured state bank directly engaging in commercial ventures. These comments indicated that the FDIC should review *each* activity on a case-by-case basis including commercial ventures.

The comments were mixed regarding the proposed transaction restrictions. The comments which were critical of the transaction restrictions indicated that some of the restrictions were unnecessary or would duplicate existing federal laws. The proposed disclosure requirements were favorably received for the most part, at least in so far as the concept of disclosure was concerned. Some of the comments expressed concern that the disclosure requirements were too comprehensive and that disclosures should only be required in instances in which there is a high probability that a customer will confuse the activity with deposit taking. The requirement that a bank's investment in a subsidiary or department be deducted from the bank's capital was viewed as unnecessary by some comments whereas others viewed it as entirely appropriate. Again, some comments felt that such a deduction should only be done on a case-by-case basis.

The proposed exceptions from required prior approval in the case of a subsidiary which engages in activities that have been found to be closely related to banking was well received with many comments suggesting that the exception should be extended to a bank directly engaging in such activities. A number of comments urged the FDIC to either exempt brokerage networking contracts from the definition of "as principal" activities or to provide an exception to required approval for such contracts even if those arrangements do not exactly comport with arrangements that have been found by the Office of the Comptroller of the Currency (OCC) to be permissible for national banks. A number of banks from Massachusetts requested that the final regulation allow banks to establish subsidiaries (without the need for prior approval) which would hold "grandfathered" investments in common and preferred stock listed on a national securities exchange and shares of registered investment companies. Several other banks requested an exception that would allow banks to invest in money market preferred stock and/or auction rate preferred stock without seeking the FDIC's prior approval. Finally, several comments objected to the regulation requiring FDIC consent for any state approved activity because doing so would harm the dual banking system.

The remainder of the comments are discussed in more detail below along with a discussion of the final regulation.

Alternate Regulatory Approaches

When the proposal was issued the FDIC sought comment on a number of alternative approaches to developing a regulation under section 24 of the FDI Act. The preamble to the proposed regulation explained that staff had considered several options on just how the FDIC should go about determining whether particular activities pose a risk to the fund. One option was to look at state statutes, determine which activities allowed in the state are covered by the provisions of section 24, and make a judgment by order (in effect "certify") as to whether the power exercised in that particular state provides the insurance funds with adequate protection. That approach was rejected as it would not allow for an assessment of bank management or the condition of the particular institution and it would require that the FDIC continually monitor changes in state law. A second option considered and rejected by staff was to not propose any implementing regulation under the activity provisions of section 24. The third option considered and rejected by staff was to publish a list of activities considered to present a significant risk to the funds. This approach was rejected as it would require the FDIC to make determinations on a class of activity (without considering the differing ways of engaging in the activity) and would be less flexible.

The comments which addressed the alternative approaches outlined by the FDIC were in favor of the FDIC adopting a regulation rather than simply allowing section 24 to stand on its own. These comments expressed the opinion that having a regulation would provide state banks with more certainty in complying with the requirements of the statute. The comments also expressed the view that the basic approach relied upon in the proposed regulation (a combination of "pre-approved" activities along with an application procedure) was a better approach than any of the other alternative approaches described in the proposal.

Description of Final Regulation

The following discussion contains a description of the final regulation and how it differs from the proposed rule which was published for comment. Individual comments are discussed in the context of the final rule as appropriate.

Definitions

1. Activity Permissible for a National Bank

Section 362.2(b) of the proposal defined the phrase "activity permissible for a national bank" to mean any activity that is authorized for a national bank under the National Bank Act (12 U.S.C. 21 et seq.) or any other statute. The definition also indicated that any activity expressly authorized by statute or recognized as permissible in regulations issued by the OCC, official circulars or bulletins issued by the OCC, or any order or written interpretation issued by the OCC, will be accepted as permissible for state banks. The preamble accompanying the proposed regulation indicated that it is the FDIC's intent to recognize OCC staff interpretations as evidence of what is a permissible activity for a national bank provided that the interpretation is considered to be valid by the OCC. If the staff interpretation does not reflect the current opinion of the OCC, it has been overruled, or the opinion has been found by a court of law to be incorrect and the court's decision is applied by the OCC in the case of all national banks, the staff interpretation will not be taken as evidence of what is permissible for a national bank. (58 FR 6455, column three.)

In the same vein, the preamble accompanying the proposed regulation contained the following discussion on the FDIC's posture regarding whether conditions and/or restrictions contained in OCC regulations, circulars, bulletins, orders, and written interpretations are relevant to determining whether a particular activity is "permissible for a national bank". In short, must a state bank obtain the FDIC's consent before engaging in a particular activity other than in conformance with the conditions and/or restrictions, if any, which are applicable to national banks which engage in the activity.

Insured state banks should be aware that it is the FDIC's present posture that in order for a state bank to conduct an activity as principal without the FDIC's consent, the activity must be conducted in the same manner in which a national bank is authorized to conduct the activity. In short, if a national bank is authorized by regulation to engage in an activity but only subject to certain conditions or restrictions, generally speaking, a state bank must abide by those conditions or restrictions if the bank wishes to conduct the activity without first obtaining the FDIC's consent. In as much as a national bank would not be able to conduct the activity in question other than in compliance with the conditions or restrictions, if any, established by the OCC, those conditions and restrictions are certainly relevant in determining what is and is not permissible for a national bank. This position is consistent with that taken by the FDIC in applying section 28 of the FDI Act (see, FDIC staff opinion letter 90–25, July 6, 1990).

Under this position an activity should be presumed to require the FDIC's prior consent based upon conditions or restrictions found in OCC regulations, circulars, staff opinions, etc.[1] The inquiry does not necessarily stop there, however. The FDIC may determine that the differences in the way in which the state allows a bank to conduct the activity are immaterial in terms of risk. If the FDIC makes such a determination, the bank's application will be returned as unnecessary. If this occurs, the FDIC would have in essence determined that the differences allowed for by state law are so immaterial that the two activities should be considered one and the same for the purposes of Section 24. (58 FR 6456, column two, three.)

The FDIC received five comments which approved of the definition as proposed. These comments indicated that a state bank should be able to rely upon OCC staff interpretations, circulars, and bulletins in determining what is a permissible activity for a national bank simply because a national bank may do so. Two comments indicated that it is inappropriate for the final regulation to incorporate staff opinions as they are not subject to any administrative review process and are not considered by some courts to be final agency action which is binding on the OCC.

Five comments objected to the FDIC's posture that, generally speaking, conditions and/or restrictions contained in OCC regulations, etc. carry over to insured state banks as a result of section 24 of the FDI Act. One of the five comments stated that the FDIC's posture on this issue compromises the role of the state as the primary regulator of state chartered institutions. Two comments found FDIC's "rebuttable presumption" that OCC conditions and/or restrictions carry over to state banks to be both reasonable and justifiable provided that the FDIC is still able to render an independent judgement and provided that the burden to overcome the presumption is not so high so as to render it insurmountable. One comment requested that the FDIC clarify the footnote at 58 FR 6456, at the bottom of column two which drew a distinction between conditions and restrictions the FDIC intends to carry over to insured state banks and those that the FDIC does not consider to be brought over. Nine comments requested that the FDIC not apply the conditions or restrictions contained in OCC staff interpretations, circulars and bulletins to any activities that were being conducted prior to December 19, 1992. The effect of this would be to bring those activities within the class of "activities permissible for a national bank" regardless of whether the activities were being conducted in accordance with the conditions or restrictions applicable to national banks. Of the nine comments, eight were from various state banking associations. These eight comments specifically requested "grandfathering" for key man life insurance and split dollar life insurance arrangements entered into by state banks that do not meet the parameters of OCC Banking Circular 249 which governs the circumstances in which national banks may enter into such arrangements.

After carefully considering the comments, the FDIC has decided for the reasons set out below to adopt the definition as proposed without change. In addition, the FDIC has decided to maintain its announced posture regarding OCC conditions and/or restrictions which relate to whether or not a particular activity is within the authority of a national bank. Finally, the FDIC will not distinguish between activities which were ongoing as of December 19, 1992 and other activities. Thus, any insured state bank which prior to December 19, 1992 entered into any insurance arrangements which would be considered impermissible investments by the OCC if entered into by a national bank must file an application with the FDIC pursuant to § 362.4(d) of the final regulation requesting approval to continue the insurance arrangement.

The FDIC agrees with the comments which indicated that it would be unfair to insured state banks not to allow them the flexibility of looking to OCC staff interpretations, bulletins, and circulars, etc. in deciding what is a permissible activity for a national bank. The fact that staff interpretations may not be binding on the OCC, and are not subject to any administrative review process, is not material if in fact a national bank could rely on a staff interpretation in deciding whether a particular activity is permissible for the bank to undertake and the OCC would not object. Insofar as applying OCC conditions and/or restrictions, the FDIC remains convinced that those conditions and/or restrictions must be considered relevant in determining whether a particular activity is permissible for a national bank. If the conditions under which a national bank is authorized to conduct an "as principal" activity are not taken into consideration, state banks may in fact be able to engage in certain conduct that is not permissible for a national bank and the FDIC will not have reviewed that conduct to determine whether the conduct poses a risk to the deposit insurance funds. That result is clearly inconsistent with the language and purpose of section 24 of the FDI Act.

For similar reasons it is not consistent with section 24 for the FDIC to in effect "grandfather" activities as suggested by several of the comments. It would be especially inappropriate in the context of key man life insurance and split dollar insurance arrangements. It has been the FDIC's experience that these arrangements can be vastly different from one policy to the next and that the potential impact of any given arrangement on a participating bank (and ultimately the deposit insurance funds) can only be adequately determined on a case-by-case basis. (See FIL–60–93, dated August 31, 1993, "Supervisory Considerations Relating to Purchases of Life Insurance by Banks"). The FDIC recognizes that incorporating OCC conditions and/or restrictions may generate additional applications but we do not feel that doing so unduly infringes on the authority of state legislatures to, in the first instance, define the powers of state banks and the conditions under which those powers may be exercised.

The FDIC hopes to discharge its responsibilities under section 24 of the FDI Act without "micro-managing" state banks. We recognize that some differences between the manner in which a state authorizes banks to conduct an activity, and the manner in which federal law requires a national bank to conduct an activity in order for that activity to be authorized for a national bank, may be totally immaterial. That is the reason the FDIC has reserved unto itself the option of determining in given instances that a

[1] It is not the FDIC's intent, however, to carry over restrictions or conditions that address safety and soundness issues and which are imposed by the OCC in its discretion as such restrictions go to the manner in which an activity must be conducted to be safe and sound and do not necessarily pertain to whether the activity is an authorized activity.

state authorized power is "permissible for a national bank" for all relevant intents and purposes under section 24 of the FDI Act and part 362. Once the FDIC has made such a determination with respect to a particular activity as authorized by a particular state, the determination will apply generally to insured state banks in that state across the board.

Finally, in applying the distinction discussed in the footnote at 58 FR 6456 of the preamble accompanying the proposed regulation, it is the FDIC's intent to carry over restrictions or conditions (other than amount limitations, see discussion below) that: (1) Are contained in the National Bank Act or other federal statute which authorizes a national bank to engage in a particular activity (i.e., the statute authorizes an activity but only if certain conditions or restrictions apply), (2) are found by the OCC to be necessarily encompassed within an activity that has been found to be incidental to an express power that is granted by statute to a national bank (i.e., absent the conditions or restrictions the activity would not be incidental to an express power), or (3) are imposed on national banks by the OCC in connection with a statute which authorizes national banks to engage in a particular activity subject to whatever conditions or restrictions may be established by the OCC. Thus, conditions or restrictions which for example address safety and soundness considerations, conflicts of interest or individual case situations which are imposed by the OCC in its discretion but which do not necessarily pertain to whether the activity is an authorized activity are not viewed by the FDIC as being encompassed within section 24 of the FDI Act. Adopting this interpretation allows both the FDIC and the states more flexibility.

In connection with the issue of to what extent OCC conditions and restrictions apply to insured state banks, the FDIC specifically requested comment on whether the FDIC should consider the real estate lending guidelines established by the OCC pursuant to the authority of section 18(o) of the FDI Act (12 U.S.C. 1828(o)) to be applicable to subsidiaries of insured state banks as a result of section 24 of the FDI Act. If the guidelines are applicable, a subsidiary of a state bank would be required to obtain the FDIC's prior consent before making real estate loans other than in compliance with those guidelines.

Three comments responded that the FDIC should not consider the guidelines to be applicable. One comment responded that the FDIC should apply those guidelines to subsidiaries through section 24. None of the comments expressed an opinion as to the basis of the recommendation. Upon reflection, the FDIC has determined that, in its opinion, the real estate lending regulations and their accompanying guidelines adopted by the OCC do in fact apply to the subsidiaries of insured state banks through the operation of section 24(d) of the FDI Act. 12 U.S.C. 371 specifically provides that a national bank may make, arrange, purchase or sell loans secured by liens on real estate subject to section 1828(o) of the FDI Act and such restrictions and requirements as the Comptroller of the Currency may prescribe by regulation or order. Thus, the authority of any operations subsidiary of a national bank to make real estate loans is statutorily conditioned upon the conditions and/or restrictions contained in 12 U.S.C. 1828(o) and any regulations issued by the OCC. The OCC's regulations specifically incorporate the guidelines at issue. Compliance with the regulations and guidelines is therefore clearly required in order for real estate lending activity to be within the authority of an operations subsidiary of a national bank. As a consequence, approval under section 24(d) of the FDI Act is required in order for a subsidiary of an insured state bank to conduct its real estate lending activities other than as set out in those regulations and guidelines.

The FDIC requested comment on whether under the law as written section 24 of the FDI Act incorporates any amount limitations on otherwise permissible activities. For example, if a national bank's authority to invest in bonds or commercial paper is limited to a certain amount, does section 24(a) of the FDI Act require a state bank to obtain the FDIC's prior consent before making investments in bonds or commercial paper to the full extent authorized under state law if state law authorizes a bank to make such investments to a greater extent than a national bank? Eight comments responded that section 24(a) does not so limit state banks. One comment expressed the opinion that the language of section 24(a) does in fact limit state banks to any amount limitations for an activity that are applicable for national banks.

Upon careful consideration of the express language of section 24, it is the opinion of the FDIC that section 24(a) is not properly read to incorporate amount limits. Section 24(a) by its express language restricts the "type" of activity in which a state bank may engage without prior consent. Taken on its own, the reference to "type" of activity might be construed to encompass type and amount of activity, however, other provisions of section 24 make that reading of section 24(a) strained. Section 24(f) specifically provides that state banks are limited in their equity investments to the "type" and "amount" permissible for a national bank. Congress clearly knew how to limit the permissible amount of a particular activity (as is evident in section 24(f)) and could have done so in section 24(a) but did not.

2. Activity

Section 362.2(a) of the proposed regulation defined the term "activity" to mean the authorized conduct of business by an insured state bank. The term "activity" was further defined to include acquiring or retaining any investment other than an equity investment when the term "activity" is used in connection with a bank itself and was defined to include acquiring or retaining any investment, including any equity investment, when the term is used in connection with a subsidiary of an insured state bank. This provision has been adopted in the final regulation without change.

Several comments expressed concern that the definition as proposed would sweep so broadly that nearly everything a bank does is made subject to the regulation. Presumably these comments imply that, by defining "activity" broadly, the regulation will unduly restrict allowable state bank activities or will impose an applications burden on banks and unduly delay implementation of a bank's business decision to take advantage of state law. Except for one comment, these comments did not suggest any way to narrow the definition. The one comment which did offer an alternative suggested that the term "activity" should only refer to any product or service provided to a customer. That suggestion has been rejected as it is inconsistent with the statutory definition of "activity" found in section 24(h) of the FDI Act which clearly indicates that the term encompasses investments.

While the FDIC is sensitive to the concerns expressed by the comments, we are of the opinion that Congress intended section 24 to have a broad sweep in order to prevent undue risk to the deposit insurance funds arising from "as principal" conduct which Congress has not seen fit to authorize for national banks but which has been authorized by the states. A broad definition is compatible with that purpose and is consistent with the statutory definition of "activity" which does not purport to

limit the scope of the term. Section 24(h) only provides that the term "activity" includes acquiring or making any investment. Thus, the term means at a minimum making an investment but also means more.

As it has been demonstrated all too well in recent years, the conduct of the business of banking can, and does, pose risk to the deposit insurance funds in any number of ways. It is therefore appropriate in the FDIC's opinion to define the term "activity" in the final rule in a broad manner so that the FDIC may properly meet its obligations under the statute. We wish to reiterate, however, that the definition is not as broad as some of the comments might have thought. As stated in the preamble accompanying the proposed regulation, it is not contemplated that loan to one borrower limits, insider loan limits, interest rate ceilings, restrictions on shared management, minimum number of directors and other similar generalized restrictions on the business of banking will be considered to be "activities". This position is consistent with the position adopted by the FDIC in applying the restrictions under section 28 of the FDI Act (12 U.S.C. 1831e) which, in general, limits the activities of insured state savings associations to those permissible for federal savings associations.

The FDIC will endeavor to balance the legitimate needs of state banks to receive prompt guidance with the FDIC's statutory obligation to assess the risk to the funds posed by certain proposed conduct. We hope to do so by handling applications as quickly as possible in order that business decisions are not unduly delayed. In that vein, it should be noted that the final regulation expands the instances in which an application is not required before an insured state bank may directly, or indirectly through a majority-owned subsidiary, conduct particular activities. As a result, we anticipate that far fewer applications will need to be filed with the agency than might otherwise have been the case.

Three comments objected to excluding equity investments from the definition of "activity" when that term is used with reference to the direct conduct of an activity by an insured state bank. In the opinion of these comments, doing so is inconsistent with section 24 as the term "activity" is defined by section 24(h) of the FDI Act to include making any investment. It follows, therefore, that if an activity includes making any investment, the FDIC should read section 24(a) of the FDI Act as allowing the agency to approve an insured state bank making or retaining an equity investment that is not permissible for a national bank and which is not otherwise excepted by the statute. According to the comments, this construction of paragraph (a) of section 24 is not inconsistent with the remainder of the section as paragraphs (c) and (f) of section 24 which specifically address equity investments are merely intended to set out exceptions to the application procedure otherwise contemplated by section 24(a). In the view of the comments, this construction of section 24(a) is consistent with the legislative history of the section (the Senate Banking, Housing and Urban Affairs Committee Report which summarizes section 24 does not distinguish between equity investments and activities). Finally, the comments point out that: (1) This reading of the statute provides the FDIC greater flexibility in that the FDIC could permit state banks to hold equity investments if doing so would not present a significant risk to the deposit insurance funds, and (2) this reading of the statute avoids forcing equity investments into subsidiaries which would be more costly and could have tax consequences.

The issue raised by these comments was fully considered by the Board of Directors at the time the FDIC adopted the provisions of part 362 concerning equity investments. (57 FR 30436, July 9, 1992). It was the FDIC's conclusion at that time that the best reading of section 24(a) (i.e., the meaning most consistent with section 24 as a whole taking all of its provisions into consideration) was that the term activity should be read to mean any investment unless the context of section 24 requires otherwise. When section 24 specifically sets out prohibitions and/or exceptions pertaining to equity investments, those prohibitions and/or exceptions control. While, the FDIC agrees that the reading of section 24 urged by the comments would provide the FDIC with greater flexibility, the FDIC continues to believe for the reasons detailed below that section 24(a) is not susceptible to the reading put forth by the comments unless subsequent paragraphs of section 24 (or portions thereof) are ignored. Moreover, the fact that certain tax consequences and/or other costs may result from what is in the FDIC's view the only correct reading of section 24, is immaterial from a legal standpoint. The fact remains that Congress specifically prohibited insured state banks from making or retaining certain equity investments but preserved unto the states the option of allowing banks to conduct those activities through subsidiaries. Although that alternative may be more costly, the alternative was left available for state banks when Congress could have just as easily limited the activities of state bank subsidiaries to those permissible for national banks.

If section 24(a) were to be read as providing the exclusive scheme for the treatment of each and every investment by an insured state bank, there would have been no need for Congress to enact section 24(c)(1), section 24(f)(1) or section 24(f)(2). Section 24(c)(1) provides that a state bank may not directly or indirectly acquire or retain any equity investment of a type that is not permissible for a national bank; there is no mention of the subsection (a) provision for FDIC approval. If section 24(a) is a general prohibition encompassing all investments and the remainder of section 24 merely creates exceptions to paragraph (a), there would have been no need to restate the prohibition on making equity investments. If Congress had intended later paragraphs of section 24 as exceptions to paragraph (a), the logical means would have been to set out the additional exceptions as exceptions to section 24(a) and not as exceptions to the "General" rules which govern specifically delineated activities in subsequent paragraphs. (In each instance the first subparagraph of every paragraph in section 24 is headed "In General".)

Section 24(f)(1) provides that an insured state bank may not directly or indirectly acquire or retain any equity investment of a type or in an amount that is not permissible for a national bank or is not otherwise permitted under section 24. Paragraph (f)(1) would be totally unnecessary if it was intended simply to be an exception to paragraph (a) of section 24. It is especially worthy of note that at the same time paragraph (f)(1) sets out the general prohibition that an insured state bank may not make any equity investment that is not permissible for a national bank, paragraph (f)(1) specifically indicates that equity investments which are otherwise permitted under section 24 are not subject to the general prohibition. If section 24(a) allows an insured state bank to make any investments (including equity investments) that are approved by the FDIC, there would never be any need to look to section 24(f) and the exceptions contained therein as authority to hold the investments specifically mentioned in section 24(f).

Section 24(f)(2) would be particularly superfluous under the reading put forth by the comments. That section

establishes an exception to the general prohibition set out in section 24(f)(1) and has its own notice and approval procedure under which common or preferred stock listed on a national securities exchange and shares of registered investment companies may be excepted. The exception in (f)(2) not only requires notice and a finding by the FDIC that the investment does not pose a significant risk to the fund, the exception has an amount limit. If section 24(a) establishes an application procedure, which procedure governs in the case of common or preferred stock and shares of investment companies? Why would an applicant seek approval under (f)(2), which has a limit, when section 24(a) is available which does not have an express amount limit. In short, reading section 24(a) as the approval procedure, renders section 24(f)(2) meaningless and one cannot say that the specific approval procedure in (f)(2) governs rather than the general approval procedure in (a) without acknowledging that provisions of section 24 which specifically refer to, and establish prohibitions and restrictions on equity investments, are to be given precedence over more general paragraphs.

3. Affiliate

The proposed regulation contained a definition of the term affiliate. As the regulation as adopted in final does not use the term "affiliate", the definition has been omitted.

4. As Principal

Section 362.2(d) of the proposal defined the term "as principal" to mean acting other than as agent for a customer, acting as trustee, or conducting an activity in a brokerage, custodial or advisory capacity. The preamble accompanying the proposal described the proposed definition as not covering, for example, acting as agent for the sale of insurance, acting as agent for the sale of securities, acting as agent for the sale of real estate, or acting as agent in arranging for travel services. Likewise, providing safekeeping services, providing personal financial planning services, and acting as trustee were described as not being "as principal" activities within the meaning of the proposal. In contrast, real estate development, insurance underwriting, issuing annuities, and securities underwriting would constitute "as principal" activities. The preamble went on to explain that, for example, travel agency activities would not be brought within the scope of part 362 if the definition were adopted as proposed (i.e., would not require prior consent from the FDIC) even though a national bank is not permitted to act as travel agent. This results from the fact that the state bank would not be acting "as principal" in providing those services. Thus, the fact that a national bank cannot engage in travel agency activities would be of no consequence. (State banks were reminded that they would of course have to be authorized to engage in travel agency activities under state law.)

The FDIC received six comments which approved of the definition as written and which specifically commended the FDIC for making clear that agency activities are not "as principal" activities. One comment expressed concern that administrative type services such as those that would be rendered to an investment company or those that might be rendered by a trustee do not seem to be excluded from the definition of "as principal". Another comment suggested that the term "as principal" be defined as meaning when a bank's own funds are at risk (such as in the case of an investment) or when a bank incurs a financial obligation.

Eighteen comments objected to the FDIC treating as an "as principal" activity entering into a contract especially where the contract involved a third-party providing brokerage services on the bank's premises. These comments were in response to the FDIC's stated initial posture that entering into a contract would be considered an "as principal" activity. The FDIC requested comment on whether part 362 should except such third-party brokerage activities from the application procedure that would otherwise be required if the contract differed from the contracts for such activities that OCC has generally found permissible for national banks. (58 FR 6459, column three.) The comments expressed the opinion that it is inappropriate to consider contracting to be an "as principal" activity regardless of to what the contract pertains. It would be especially inappropriate, according to the comments, to adopt that approach in connection with a contract for the performance of brokerage services by a third-party since the brokerage services, if done by the bank itself, would not be considered "as principal".

Finally, one comment suggested that the words "for a customer" which appear in the proposed definition after the words "other than as agent" be deleted from the definition. According to this comment, the phrase "for a customer" unjustifiably narrows the agency exclusion.

The final regulation adopts the proposed definition with one change. Under the final definition, administrative services are excluded from the term "as principal". The words "for a customer" have not been deleted because the legislative history of section 24 specifically uses the phrase "as agent on behalf of a customer" when discussing what activities were meant to be excluded from the reach of section 24 by the use of the phrase "as principal". The FDIC also rejected the suggestion that "as principal" be defined to refer to instances in which a bank's funds are at risk and instances in which a bank incurs a financial obligation. The suggested definition would, in the FDIC's opinion, simply be more likely to engender confusion and could possibly sweep too broadly in some cases. It may be difficult in any given instance to determine if bank funds are at risk and determining when and if an obligation of the bank arises could be problematical.

Finally, after carefully weighing the comments regarding contracts, the FDIC concurs that it is more appropriate to look through the contract itself to the underlying activity which is the subject of the contract in determining whether the contract gives rise to an "as principal" activity. Thus, rather than treating entering into the contract itself to be an "as principal" activity, the FDIC will look to what the contract involves in deciding if the contract triggers review under section 24 of the FDI Act and part 362. Using this standard, entering into a contract with a third-party under which securities brokerage services would be provided on the bank's premises would not constitute an "as principal" activity. In view of the above, there is no need for the final regulation to create an exception for brokerage contracts with third-parties.

5. Bona Fide Subsidiary

Under the proposed regulation the term "bona fide subsidiary" was defined to mean a subsidiary of an insured state bank that at a minimum: (i) Is adequately capitalized; (ii) is physically separate and distinct in its operations from the operation of the insured bank; (iii) maintains separate accounting and other corporate records; (iv) observes separate corporate formalities such as separate board of directors' meetings; (v) maintains separate employees who are compensated by the subsidiary; (vi) shares no common officers with the insured bank; (vii) has, as a majority of its board of directors, persons who are neither directors nor officers of the insured bank; and (viii) conducts business pursuant to independent policies and procedures designed to

inform customers, and prospective customers, of the subsidiary that the subsidiary is a separate organization from the insured bank. The proposed definition specifically provided that the separate employee requirement was not to be construed to prohibit the use by the subsidiary of bank employees to perform functions which do not directly involve customer contact (such as accounting, data processing, and recordkeeping) so long as the bank and the subsidiary contract for the services on terms and under conditions that are comparable to those agreed to by independent entities. The proposal required that certain grandfathered insurance underwriting subsidiaries meet the definition of a bona fide subsidiary and also provided that approvals for a subsidiary to engage in an otherwise impermissible activity would be subject, unless specifically waived, to the condition that the subsidiary be a bona fide subsidiary.

The proposed definition drew a lot of criticism. Six comments expressed the opinion that meeting the definition of a bona fide subsidiary would be too costly for banks generally and another seven indicated that the costs would be especially prohibitive for small banks. Several comments stated that the requirement for a bona fide subsidiary goes beyond what is required by the statute and contains elements that are not necessary in order to provide the bank insulation and to protect the bank against a piercing of the corporate veil between the bank and its subsidiary. One comment suggested that the requirement for a bona fide subsidiary not be imposed if the parent bank is well-capitalized. Seventeen comments objected to the requirement for separate officers and the limit on shared directors. Three comments objected to the definition as proposed in that, according to these comments, the definition seems to require that the bank and the subsidiary have totally separate buildings. One comment suggested that the only element necessary to achieve insulation for the bank from any liability arising out of any contract the subsidiary may enter into is disclosure of the separateness of the bank and its subsidiary. The same comment indicated that the bank can be insulated from tort liability for the acts or omissions of the subsidiary if the subsidiary maintains adequate capital and the subsidiary carries adequate insurance. Most of those commenting on the definition also indicated (as is discussed at more length below in connection with the standard conditions provisions of the proposal) that the FDIC should only impose the bona fide subsidiary requirement on a case-by-case basis. Three comments supported the definition and the "firewalls" that would be established by the definition. Of the three comments which supported the definition as proposed, one stated that structural insulation can be used to distinguish capital which is at risk, to identify corporate responsibility, and to help regulators identify the relative soundness of diverse parts of an organization.

As discussed elsewhere, the FDIC has deleted the standard conditions from the final regulation, however, any particular subsidiary may be required to be bona fide on a case-by-case basis.[2] In addition, the final regulation does specifically retain the requirement that certain grandfathered insurance underwriting subsidiaries be bona fide. Thus, despite the fact that the standard conditions have been dropped, the final regulation still contains a definition of the term "bona fide subsidiary".

Although the definition has been modified in the final rule, that definition is substantially the same as was proposed for comment with two exceptions: (1) A bank and its bona fide subsidiary may share officers so long as a majority of the subsidiary's executive officers are neither executive officers nor directors of the bank, and (2) the physically separate requirement has been amended to clearly state that the bank and its subsidiary are not prohibited from sharing the same facility provided that the area in which the subsidiary conducts business with the public is clearly distinct from the area in which customers of the bank conduct business with the bank. The change with respect to the subsidiary's officers is being made in response to the comments which objected to the cost associated with the subsidiary being required to have totally separate officers. This criteria has not been eliminated despite the comments urging the FDIC to do so because the FDIC believes that a part of the cost of operating a business is finding persons who are willing to become leaders of the organization. To indicate that those persons currently involved with the bank are the only people available to manage the affairs of the subsidiary, points to a business plan that may be weak because it cannot attract qualified management based on the future prospects of the business. The language regarding the use of physically separate operations has been modified in response to the comments which expressed concern that the regulation required totally separate facilities.

The remaining criteria for a "bona fide" subsidiary have not been altered. The FDIC remains of the opinion that the criteria set out in the definition accurately reflects case law concerning corporate separateness. The FDIC also feels that the cited factors are appropriately considered to be the minimum necessary to assure the likelihood, in all circumstances, that the corporate separateness between a parent bank and its subsidiary will be respected.

The courts in weighing whether to pierce the corporate veil between a parent company and its subsidiary typically balance the interests of an aggrieved party against a traditional respect for the limited liability enjoyed through incorporation. The factors set out in the definition of bona fide subsidiary are among those typically weighed by the courts. The analysis used by the courts does not involve a simple check-list and the outcome in any given case is heavily dependent upon the overall facts. Additionally, the likelihood of a court piercing the veil may vary depending upon the cause of action that is asserted. No one factor is determinative of the outcome in all cases, however, adequate capital and the maintenance of a public perception of separateness is typically key to a decision by the courts not to pierce the corporate veil.

The Board of Directors feels that it is a reasonable exercise of the FDIC's authority in appropriate cases to impose requirements beyond adequate capital in order to be assured that a subsidiary is a legally separate entity from its parent bank, especially in the case of a subsidiary which engages in activities that are not permissible for a subsidiary of a national bank and in instances in which it is determined by the FDIC that it is necessary for certain economic and legal separations to exist between the subsidiary and the bank in order that the deposit insurance funds are protected from risk. The bona fide subsidiary requirements are all relevant to whether the bank and its subsidiary are separate business entities which will be perceived to be separate and distinct by the public. The FDIC does not feel that any of these requirements, if imposed, will unduly hinder insured

[2] If the FDIC determines that it is not necessary or appropriate for a subsidiary to be a "bona fide" subsidiary in order for the activities of that subsidiary to not pose a significant risk to the deposit insurance funds, the FDIC may nonetheless determine for safety or soundness or other reasons that one or more of the criteria for a bona fide subsidiary should be imposed. For example, the FDIC may determine that the subsidiary's operations should be physically separate and distinct from those of the bank or that the subsidiary should have separate management.

state banks from taking advantage of state law nor unduly increase a bank's cost in establishing and operating a subsidiary. This is especially so due to the modification that has been made in the final rule with respect to shared officers. In addition, as the final rule does not automatically impose the transaction restrictions between an insured state bank and any of its subsidiaries that are required by part 362 to be bona fide as had been proposed (see discussion below), even if a bank's subsidiary is required to be bona fide, the impact of that requirement is substantially lessened when and if it is imposed.

For the purposes of applying the adequate capital criteria, adequate capitalization will be judged according to established industry standards. In a case in which industry standards are not well known, the FDIC will work with the applicant to find appropriate levels of capital. As indicated above, the physically separate requirement will not be construed to require completely separate buildings. Physical distinctiveness will be determined based on whether the subsidiary's operation is housed in a fashion so as to make the public aware that it is dealing with a separate entity and not the insured state bank. Separate accounting and other corporate formalities and conducting business pursuant to independent policies will be similarly judged. If the operation is structured in order to make the public aware that it is dealing with a separate entity, the FDIC will not object.

6. Department

Under the proposal the term "department" was defined as a division of a bank that satisfies five requirements designed to create separation between the division and the remainder of the bank. The "department" would: (1) Be physically distinct from the remainder of the institution, (2) maintain separate accounting and other records, (3) maintain assets, liabilities, obligations and expenses which are by statute to be separate and distinct from those of the remainder of the institution, (4) be liquidated under applicable law separately from the other divisions of the institution, and (5) be subject to a requirement that the obligations, liabilities, and expenses of the department can only be satisfied with the assets of the department. Under the proposal, certain grandfathered insurance underwriting activities conducted directly by an insured state bank were required to be conducted in a department and the standard conditions provision of the proposal indicated that any approval for an insured state bank to directly conduct otherwise impermissible activities would be conditioned, unless specifically waived, upon the activity being housed in a department. As discussed elsewhere, the standard conditions provision has been eliminated from the final regulation, thus, whether or not a particular activity if conducted directly by a bank will be required to be done through a department will be determined on a case-by-case basis.[3] However, grandfathered insurance underwriting activities are still required under the final regulation to be housed in a department of the bank.

Comments received on the definition of "department" were generally critical. Six comments emphasized that it would be impossible for banks to comply with the requirement since state law in many cases does not separate the assets, liabilities, obligations and expenses of any division of a bank from any other division of the bank. As it may be difficult (and certainly time consuming) to amend state law, few state banks could comply with the regulation thus state banks would be forced to establish subsidiaries. One comment added that the requirement would impose costs that would discriminate against smaller banks while another comment indicated that the requirements would discourage the conduct of activities on a small scale. Three comments suggested that the requirements be imposed only on a case-by-case basis. One comment suggested the requirements are unnecessary for activities such as the purchase of auction rate and adjustable rate preferred stock.

The definition of "department" as contained in the final regulation has been amended slightly in response to the comments. The requirement that the bank and its department are liquidated separately under state law has been eliminated and the requirement that the department's assets, liabilities, obligations and expenses are separate from those of the remainder of the bank has been modified by eliminating the requirement that separation be established by state statute. However, the reference to state statute has been added to the requirement that the obligations, liabilities and expenses of the department can only be satisfied with the assets of the department.

The change with respect to the liquidation of the department has been made in recognition of the fact that separate liquidation may not be practical in the case of activities that are not separately regulated and supervised. Eliminating the requirement that state law separate the bank's and the department's assets allows a bank to establish that separation through its own accounting and/or other practices. The reference to state law in the case of the satisfaction of liabilities has been added as the FDIC feels strongly that without the force of state law behind it, an attempt by the bank to limit the repayment of those liabilities from the bank's general assets may not be successful.

When the deparment structure is required by the FDIC, the final regulation does not require that the department must be totally separate from the operations of the insured bank, however, areas of operation of the department must be distinguished from other areas of the bank. The FDIC does not wish to limit the methods that may be employed in making the distinction other than to emphasize that the operations of the department should be recognizably different from the operations of the bank. The FDIC intends to maintain its flexibility in applying this standard in order to balance the legitimate needs of the bank to reduce costs with the FDIC's goal of limiting customer confusion as much as possible. The requirement to maintain separate records and accounts will help clarify which assets are available to meet the obligations of the department. This arrangement also allows for a better indication of profitability of the operation. The FDIC anticipates that most institutions would normally maintain separate accounts and records for operations in a department, therefore, this requirement should not represent an added burden. Certain expenses may be shared between a bank and its department, but such arrangements should reflect a reasonable estimation of the department's share of the expense.

7. Commercial Venture

The proposed regulation contained a definition of the term commercial venture which, in brief, defined a commercial venture to mean any activity other than providing a financial service. Financial service was in turn defined. The definition was for the most part favorably received. The definition has been omitted from the final regulation, however, as the prohibition on the direct conduct of any commercial venture by an insured state bank which had been contained in the proposal has been dropped from the final regulation.

[3] The FDIC concedes the possibility that not all otherwise impermissible activities need to be confined to a department in order to protect the deposit insurance funds from significant risk.

A discussion of the proposed prohibition on commercial ventures as well as a discussion of the reasons why the prohibition is being eliminated are set out elsewhere below.

8. Director, Executive Officer, Principal Shareholder, and Related Interest

The text of the proposed rule did not itself contain definitions of the terms director, executive officer, principal shareholder and related interest, however, the preamble accompanying the proposal indicated that those terms would be understood to have the same meaning as is relevant for purposes of section 22(h) of the Federal Reserve Act (12 U.S.C. 375) and § 337.3 of the FDIC's regulations (12 CFR 337.3). The final rule specifically incorporates those definitions in the text of the regulation by cross referencing § 337.3 of the FDIC's regulations.

9. Extension of Credit

The proposed regulation defined "extension of credit" as having the same meaning as used for the purposes of § 337.3 of this chapter. This definition is unchanged in the final rule.

10. Investment in Department

The proposed regulation defined the term "investment in a department" as any transfer of funds by an insured state bank to one of its departments which is represented on the department's accounts and records as an accounts payable, a liability, or equity of the department. The definition specifically provided that transfers of funds to the department in payment of services rendered by that department are not to be considered an investment in the department. No comments were received on the proposed definition and it is therefore being adopted in final without change. The definition is only relevant to the grandfathered conduct of certain insurance underwriting activities unless the FDIC imposes on a case-by-case basis a limit on a bank's investment in a department and/or the FDIC (again on a case-by-case basis) requires a bank to deduct its investment in a department from the bank's capital.

11. Investment in Subsidiary

The proposed regulation defined the term "investment in a subsidiary" to mean the total equity investment in a subsidiary by a bank plus any debt issued by the subsidiary that is held by the bank. Although no comments were received which directly questioned this definition, several comments indirectly sought clarification. The proposed regulation listed among its standard conditions the requirement that an insured state bank meet a certain capital level after deducting its investment in a subsidiary. Another proposed provision limited a bank's extensions of credit to its subsidiary. Several comments thought that it was inconsistent for the regulation to limit a bank's loans to its subsidiary but not to limit a bank's investment in its subsidiary and several others urged the FDIC to consider senior subordinated debt to be covered by the loan limitation and not to be encompassed by the definition of "investment in a subsidiary".

The definition has been modified in the final regulation to include any extensions of credit from the bank to its subsidiary. However, as is discussed in more detail below, the final regulation does not impose any automatic limit on a bank's extensions of credit to its subsidiary and the automatic capital deduction has been eliminated (except in the case of certain grandfathered insurance underwriting subsidiaries) due to the elimination of the standard conditions from the final regulation. Thus, unless the FDIC imposes on a case-by-case basis a limit on a bank's investment in its subsidiary and/or the FDIC requires a bank to deduct its investment in its subsidiary from the bank's capital, the definition of "investment in a subsidiary" is only relevant insofar as certain grandfathered insurance underwriting subsidiaries are concerned.

General Prohibition on Engaging as Principal in Activities That Are Not Permissible for a National Bank

Section 362.4(a)(1) of the final regulation tracks section 24(a) of the FDI Act. Section 362.4(a)(1) provides that after December 19, 1992, no insured state bank may directly engage as principal in any activity that is not permissible for a national bank, and no subsidiary of an insured state bank may engage as principal in any activity that is not permissible for a subsidiary of a national bank, unless the FDIC gives its consent. (The final regulation contains a number of exceptions to the general requirement to obtain consent which are discussed in detail below.) Insured state banks that wish to obtain consent must file an application in accordance with § 362.4(d) of the final regulation. Insured nonmember banks are not prohibited from requesting the FDIC's consent to engage as principal in any activity that is otherwise not permissible for a national bank or its subsidiaries with the exception of insurance underwriting. Insurance underwriting activities beyond the authority of national banks are specifically precluded to insured state banks by section 24(b)(1) of the FDI Act and may not be engaged in by an insured state bank unless otherwise excepted by section 24 and part 362. The statutory prohibition on insurance underwriting activities found in section 24(b)(2) of the FDI Act is repeated in the final regulation at § 362.4(a)(2). The language of paragraph (a)(2) makes clear that the prohibition does not apply if the insurance underwriting activity is otherwise permitted by part 362.

The proposed regulation had indicated that insured state banks would not be permitted to directly conduct commercial ventures. The prohibition would not have prevented an insured state bank from requesting the FDIC's consent to engage as principal, through a majority-owned subsidiary, in a commercial venture of the sort that is not permissible for a national bank subsidiary. The following discussion of that aspect of the proposal appeared in the preamble accompanying the proposed regulation.

> Paragraph (a)(2) of the proposal represents in essence the opinion of the FDIC that directly engaging in commercial ventures presents a significant risk to the deposit insurance fund and that such activities are inappropriate for federally insured depository institutions. The FDIC has the responsibility under section 24 of the FDI Act to ensure that activities conducted by insured state banks do not pose a significant risk to the deposit insurance funds. Moreover, the FDI Act also directs the FDIC to ensure that activities conducted by insured banks are consistent with the purposes of federal deposit insurance, i.e., among other things that the activities are appropriate given the extension of the federal safety net to the institution. Federal deposit insurance permits banks to fund illiquid investments (such as loans) with bank deposits (which are liquid assets), that is to say, federal deposit insurance is designed to enhance the asset transformation services of banks. Federal deposit insurance enhances those activities as it provides stability to the banking system by eliminating the motivation behind bank runs. It would be inappropriate, as well as counterproductive, for the federal safety net to in effect be extended to activities that do not compliment bank asset transformation services and which are not associated with the production and distribution of financial services. To do so may lead to greater risk taking by banks (but not bank shareholders) and may ultimately adversely affect the deposit insurance fund. What is more, it may be safely assumed that bank management is not likely to have the necessary expertise associated with conducting commercial ventures and that, if banks were to conduct commercial ventures, banks would not have any particular advantage in commercial businesses based upon economies of scale or other factors which would make those ventures profitable for banks. 58 FR 6459, columns 2 and 3.

The FDIC received eleven comments that objected to the flat prohibition on insured state banks directly engaging in commercial ventures. One comment supported the prohibition. The comments which objected to the prohibition unanimously expressed the opinion that banks should be permitted to request the FDIC's consent to engage in such activities and that the FDIC should only prohibit that conduct, if at all, after a case-by-case analysis. Some of the comments also expressed concern that the prohibition could be read to prohibit some activities that banks presently undertake to satisfy their community reinvestment act obligations.

After carefully weighing the comments, the Board of Directors has determined to adopt the case-by-case approach urged by the comments. Having adopted this change, however, the Board of Directors wishes to apprise insured state banks that the burden of persuading the FDIC that such activities do not present a significant risk to the fund and that such activities are appropriate for federally insured institutions resides with the applicant. Moreover, given the FDIC's continued reservations about such activities, that burden is a heavy one.

Ten comments objected to the requirement for a state bank to seek the FDIC's consent prior to exercising a power authorized by the bank's chartering authority. The main concern expressed by these comments was that the requirement will impair the dual banking system. Five comments indicated that the need to become familiar with OCC regulations, etc. creates a tremendous burden for state banks. Four comments requested that the FDIC create a list of activities that are permissible for national banks. One comment requested that the FDIC adopt a formal procedure whereby an insured state bank could obtain an opinion from the OCC as to whether a particular activity is permissible for a national bank and one comment requested that the FDIC clarify how the FDIC intends to co-ordinate with the OCC on the issue of what activities are permissible for national banks.

The requirement to in certain instances obtain FDIC's consent before exercising state authorized powers has been retained in the final rule. Although that requirement might possibly be characterized by some as impairing the dual banking system, section 24 is clear and unambiguous in establishing just such a requirement. The FDIC has no discretion in this matter. It is the FDIC's desire to minimize the potential impact of the regulation on the dual banking system by carving out situations in which applications are in effect preapproved and by processing applications that are necessary as quickly as possible. The FDIC recognizes that it will be difficult for state banks to become familiar with OCC regulations, etc. and for that reason has made available upon request through the FDIC's Office of Public Information a list of activities and equity investments that the OCC has recognized as permissible for national banks and their subsidiaries. Although this list is not a comprehensive list, it should be a valuable aid for insured state banks. Finally, the FDIC intends to respond to inquiries from insured state banks as to the permissibility of certain activities as quickly as possible and will closely coordinate with the OCC to the fullest extent possible in responding.

Exceptions to the General Requirement to Obtain FDIC's Prior Consent

Section 362.4(b) of the proposed regulation sets out several exceptions to the general requirement than an insured state bank must obtain the FDIC's prior consent to directly or indirectly engage as principal in any activity that is not permissible for a national bank and its subsidiaries. Several of the exceptions were simply carried over from section 24 itself. Other exceptions embodied the FDIC's preliminary determination that it would not present a significant risk to the deposit insurance fund for any insured state bank to engage as principal in particular activities provided that certain conditions and restrictions are observed. Three such exceptions based upon a lack of significant risk to the fund were proposed (guarantee activities, activities that are closely related to banking, securities activities conducted through a subsidiary of an insured nonmember bank pursuant to § 337.4 of this chapter). The proposal also specifically invited comment on whether the list of activities which do not present a significant risk to the fund should be expanded.

In addition, the FDIC sought comment on whether an additional exception should be added to the regulation which would allow an insured state bank the flexibility of holding equity securities through a bona fide, majority-owned subsidiary subject to certain restrictions. The preamble to the proposed regulation indicated that the type of restrictions under consideration by the FDIC were: (1) The equity securities must be listed on a national securities exchange, (2) the subsidiary cannot control any issuer of securities, (3) the bank must meet its minimum capital requirements, (4) the bank must be adequately capitalized without taking into consideration the bank's investment in the subsidiary, and (5) the bank's investment in the subsidiary is no greater than 25 percent of the bank's capital. In addition to seeking comment on the above, the preamble to the proposed regulation invited comment on the impact of section 24 of the FDI Act on the investment portfolios of subsidiaries of insured state banks whose insurance underwriting activities are excepted by part 362 and section 24 of the FDI Act from the general prohibition on insurance underwriting activities.

All of the proposed exceptions have been retained (in certain instances the exceptions have been modified based upon the comments) and a number of additional exceptions have been added to the final regulation. In addition the exceptions are now found in paragraph (c) of § 362.4. In each case the references to "subsidiary" in § 362.4(c) have been changed to "majority-owned subsidiary". This change is made merely in way of clarification in order to avoid possible confusion. The exceptions, as well as the comments received by the FDIC, are discussed in detail below.

Generally speaking, all of the exceptions require that the bank meet its minimum capital requirements. (This requirement is expressly derived from the requirements of section 24 of the FDI Act.) It is not the FDIC's intention to require any bank whose capital falls below those minimum standards to immediately cease any activity in which the bank had been engaged pursuant to an exception. The FDIC will deal with such eventuality rather on a case-by-case basis through the examination process. In short, the FDIC intends to utilize the supervisory and regulatory tools available to it in dealing with the bank's loss of capital. The issue of the bank's ongoing activities will be dealt with in the context of that effort. In the case of a state member bank, the FDIC will communicate its concerns regarding the continued conduct of an activity to the bank's appropriate federal banking agency. It is that agency which will formulate a response to the bank's drop in capital. The FDIC is of the opinion that the case-by-case approach to whether a bank will be permitted to continue an activity is preferable to forcing a bank to, in all instances, immediately cease the activity in question. Such an inflexible approach could exacerbate an already poor situation and the FDIC has thus opted to reject that approach. It should be noted that the FDIC sought comment on the above described posture in

connection with the proposed regulation. No comments were received.

1. Savings Bank Life Insurance

Section 362.4(b)(1) of the proposal provided that any insured state bank that is located in Massachusetts, New York or Connecticut is not prohibited from engaging in the underwriting of savings bank life insurance provided that three conditions are met: (1) The FDIC has not found that such activities pose a significant risk to the fund; (2) the bank conducts the savings bank life insurance activities through a division of the bank that meets the definition of a "department"; and (3) the bank makes certain customer disclosures. The proposed exception is based upon section 24(e) of the FDI Act which creates a savings bank life insurance exception, requires that customer disclosures be made, and directs the FDIC to make a finding whether savings bank life insurance activities conducted under the exception in section 24(e) will pose a significant risk to the deposit insurance fund. The statute directed the FDIC to make such finding by December 19, 1992.

The substance, timing, and placement of the proposed disclosures were the same as are required under § 362.3(b)(3) of part 362 which sets out a parallel exception for the ownership of the equity of a savings bank life insurance company. Under the exception as proposed, disclosures were required to be prominent, to be made prior to the time of purchase of the insurance policy, other insurance product, or annuity, and were required to be in a separate document clearly labeled "customer disclosure" if the disclosure did not appear on the face of the policy, other insurance product, or annuity. The proposal provided that the following or a similar statement would satisfy the disclosure requirements: "This [insurance policy, other insurance product, annuity] is not a federally insured deposit and only the assets of the bank's insurance department may legally be used to satisfy any obligation of that department." Lastly, the proposal indicated that an insured state bank could comply with the disclosure requirements by meeting any substantially similar disclosure requirement imposed by state law or regulation.

No comments were received on this exception. Despite that fact, however, the savings bank life insurance exception has been adopted as proposed with one change. As required by section 24(e), the FDIC conducted a study of the savings bank life insurance systems in Massachusetts, New York and Connecticut and on May 25, 1993, issued its determination regarding whether savings bank life insurance activities pose, or may pose, a significant risk to the deposit insurance funds. Although that study concluded that certain aspects of the systems in those states may warrant certain regulatory or supervisory initiatives by the FDIC which the agency may undertake in the future, the FDIC determined that the operation of the system in those states does not at the present time present a significant risk to the deposit insurance funds. In view of the issuance of the FDIC's conclusion, the savings bank life insurance exception in the final regulation has been modified from the proposal in that the final regulation conditions the exception on the FDIC not altering its determination that was made pursuant to section 24(e) of the FDI Act.

2. Insurance Underwriting

Section 24(d)(2)(A) of the FDI Act provides that no subsidiary of an insured state bank may engage in insurance underwriting except to the extent such activities are permissible for national banks. Notwithstanding the general prohibition under section 24(d)(2)(A), section 24(d)(2)(B) provides that a well-capitalized insured state bank and its subsidiaries were lawfully providing insurance as principal on November 21, 1991 may continue to provide insurance as principal in the state or states in which the bank/subsidiary did so on November 21, 1991 so long as the insurance that is provided is of the same type which the bank provided as of November 21, 1991 and provided that the insurance is only offered to residents of that state, individuals employed in that state, and any other person to whom the bank provided insurance as principal without interruption since such person resided in or was employed in that state. In the case of resident companies or partnerships, the bank's principal activities must be limited to providing insurance to the company's or partnership's employees residing in the state and/or to providing insurance to cover the company's or partnership's property located in the state.

Section 362.4(b)(2)(i) of the proposed regulation recited the exception for insurance underwriting found in section 24(d)(2)(B). That provision has been adopted in the final regulation without change. (See § 362.4(c)(2)(i)). The FDIC did receive several comments which were critical of the exception as worded because, in the opinion of the comments, the exception perpetuates the mistake made by § 362.3(b)(7) of part 362. That mistake, again according to the comments, is to misread the geographic scope of the statutory exception found in section 24(d) to extend beyond the state in which the bank is chartered and the state in which the bank's subsidiary is incorporated.

The FDIC was petitioned pursuant to section 553(e) of the Administrative Procedure Act (5 U.S.C. 553(e)) to amend those provisions of part 362 which concern the grandfathered insurance underwriting authority of insured state banks. In response to those petitions, on April 29, 1993 the FDIC sought public comment on the issue of whether or not part 362 should be amended to reflect a narrowed reading of the geographic scope of the exception contained in section 24(d)(2)(B) of the FDI Act (58 FR 25953). Staff is reviewing those comments and expects to take the matter to the Board of Directors for consideration in the near future. In the interim, the Board of Directors has determined that it is appropriate to adopt the provision as proposed. If the Board of Directors should ultimately determine in connection with the April solicitation of comment that it is appropriate to narrow the reach of the insurance underwriting exception, all relevant portions of part 362 will be amended at that time.

Section 362.4(b)(2)(ii) of the proposed regulation provided that, notwithstanding the overall prohibition on an insured state bank underwriting insurance which a national bank could not underwrite, an insured state bank that was engaged in the underwriting of insurance on or before September 30, 1991 which was reinsured in whole or in part by the Federal Crop Insurance Corporation may continue to do so. This exception tracks the language of section 24(b)(2) of the FDI Act. No comments were received regarding this exception and it is adopted in the final regulation without change. (See § 362.4(c)(2)(ii).)

Finally, an exception has been added to the final regulation which tracks the statutory exception provided for certain title insurance subsidiaries. This exception makes clear that an insured state bank may not only hold the equity of certain title insurance subsidiaries (see § 362.3(b)(7)(iii)) but that the title insurance activities of the subsidiary are not affected by part 362 provided that the parent bank does not undergo a change in control. The omission of this exception from the proposal was an oversight. As it merely restates what is expressly provided for by statute, it does not represent any substantive change under the law.

3. Activities Found Not To Present a Significant Risk to the Deposit Insurance Fund

The proposed regulation contained exceptions to required prior approval for three activities that the FDIC had preliminarily determined did not present a significant risk to the deposit insurance funds. All of the exceptions required that the insured state bank meet and continue to meet its applicable minimum capital standards. In each case the insured state bank would be required to have the authority to conduct the activity in question, i.e., the insured state bank could not rely upon part 362 as authority for the conduct of the activity. The three exceptions were: (1) Guarantee activities, (2) activities closely related to banking, and (3) securities activities conducted through a subsidiary of an insured nonmember bank. The three exceptions are continued in the final regulation with, in some cases, minor modifications. These three exceptions, as well as several others added to the final regulation as a result of the comments, are discussed at length below.

The introductory language of what has now become § 362.4(c)(3) has been reworded somewhat from the proposal in the following ways: (1) To emphasize that an insured state bank must be authorized to engage in the activity under state law and that the activity must be otherwise permissible under federal law and regulation, (2) to place in the introductory language the requirement that an insured state bank must meet and continue to meet its applicable capital standards (in the proposal this language was restated in connection with each exception), and (3) to specifically indicate that the FDIC retains the authority, under appropriate circumstances, to take any action within its authority as warranted with respect to an activity for which an exception has been provided. The change emphasizing that any particular activity must otherwise be authorized under state law and consistent with federal law is being added in response to a comment. The language regarding FDIC's retention of authority is more of a reminder to state banks than it is a substantive change and is consistent with section 24(i) of the FDI Act which provides that the FDIC's authority to impose more stringent conditions is not affected by the adoption of section 24.

(a) *Guarantee activities.* Section 362.4(b)(3)(i) of the proposed regulation provided for an exception to required prior approval for certain guarantee activities. No comments were received in regard to this proposed exception which is being adopted in final without change. (See § 362.4(c)(3)(i).) The explanation of the proposed guarantee exception in the preamble to the proposed regulation is set out below:

> Section 362.4(b)(3)(i)(A) of the proposed rule provides that an insured state bank which meets and continues to meet the applicable minimum capital standards as prescribed by the appropriate federal banking agency may directly guarantee the obligations of others as provided for in § 347.3(c)(1) of the FDIC's regulations. Section 347.3(c)(1) provides that foreign branches may guarantee customer's debts or otherwise agree for their benefit to make payments on the occurrence of readily ascertainable events if the guarantee or agreement specifies the branch's maximum monetary liability thereunder. The guarantee or agreement shall be combined with all standby letters of credit and loans for purposes of applying any legal limitation on loans of the bank. If the guarantee or agreement is subject to separate limitation under state or federal law, the separate limitation shall apply in lieu of the loan limitation.
>
> Section 362.4(b)(3)(i)(B) of the proposed regulation provides that an insured state bank that meets and continues to meet the applicable minimum capital standards as prescribed by the appropriate federal banking agency, may directly offer customer-sponsored credit card programs, and similar arrangements, in which the insured state bank undertakes to guarantee the obligations of individuals who are its retail banking deposit customers, provided that the bank must establish the creditworthiness of the individual before undertaking to guarantee his/her obligations.
>
> Both of these exceptions are carried over from part 332 of the FDIC's regulations, "Powers Inconsistent with the Purposes of Federal Deposit Insurance Law". That regulation * * * prohibits insured state nonmember banks (except a District bank) from, among other things, acting as surety or guaranteeing the obligations of others subject to certain listed exceptions. The FDIC has also recognized a number of additional exceptions over the years on an interpretive basis. Those interpretive exceptions are the same ones that the OCC has recognized by regulation for national banks. National banks have been found by the courts to lack the authority to act as surety or guarantee the obligations of others except in certain instances. The two exceptions set out in § 362.4(b)(3)(i) of the proposal which are carried over from part 332 are not found in OCC's regulations. Insured state banks should note that any guarantee that would be permissible for a national bank may be entered into by a state bank, assuming that state law authorizes the bank to do so, without the bank first obtaining the FDIC's consent under part 362.

(b) *Activities that are closely related to banking.* Section 362.4(b)(3)(ii) of the proposed regulation provided for an exception to the prior approval requirement in the case of as principal activities engaged in by a majority-owned subsidiary if the activities have been found by the Board of Governors of the Federal Reserve System (FRB) to be closely related to banking for the purposes of section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843). Thus, under the exception as proposed, any "as principal" activity that is on the FRB's section 4(c)(8) list (see 12 CFR 225.25), or has been found by the FRB by order to be closely related to banking, would not require the FDIC's prior consent if it is to be conducted through a subsidiary. Comment was specifically requested on whether this exception should be retained, whether the subsidiary should be required to be a bona fide subsidiary, and whether a similar exception should be provided for the direct conduct of such activities by an insured state bank.

Fourteen comments supported the proposed exception. Eight comments suggested that the final regulation provide a similar exception for a state bank which directly conducts activities that have been found to be closely related to banking. Nine comments expressed the opinion that there was no need to require a subsidiary of the bank which engages in activities closely related to banking to be a bona fide subsidiary.

The final regulation retains the exception for a majority-owned subsidiary which solely engages in activities that have been found to be closely related to banking (§ 362.4(c)(3)(ii)(B)). Such subsidiaries are not required to be bona fide subsidiaries. In addition, an exception has been added to the final rule which allows an insured state bank to directly engage as principal without the FDIC's prior consent in any activity that is not permissible for a national bank provided that the FRB has determined by regulation or order that the activity is closely related to banking for the purposes of section 4(c)(8) of the Bank Holding Company Act. The exception specifically indicates, however, that it is not to be construed to permit the bank to directly hold any equity security which is an impermissible investment for a national bank and which is not otherwise permissible under § 362.3(b) of part 362. Insured state banks should also note that the exception should not be construed to permit a bank to directly conduct an activity that is otherwise impermissible under federal law. In addition, banks are to be advised that a subsidiary which engages in securities activities that have been found to be closely related to banking but which fall within the scope of § 337.4 of the FDIC's regulations are subject to that regulation

rather than part 362 (see exception discussed immediately below).

(c) *Securities activities conducted through a subsidiary of an insured nonmember bank.* Section 362.4(c)(3)(iii) of the proposed regulation set out an exception for securities activities conducted by an insured nonmember bank through a subsidiary of the bank provided that: (1) Those activities are conducted in compliance with § 337.4 of the FDIC's regulations, (2) the bank meets, and continues to meet, the applicable minimum capital standards of part 325 of the FDIC's regulations, and (3) the bank is adequately capitalized exclusive of any investment in the subsidiary that is required by § 337.4 to be deducted from the bank's capital. In brief, the exception as proposed excluded from coverage under part 362 any securities activities of the type covered by § 337.4 which are conducted in accordance with § 337.4.

Section 337.4 of the FDIC's regulations governs the securities activities of subsidiaries of insured nonmember banks. In brief, that regulation:

(1) Requires that any subsidiary which engages in securities activities that are not permissible for the parent bank under section 16 of the Glass-Steagall Act (12 U.S.C. 24(Seventh)) must be a bona fide subsidiary;

(2) Requires the bank's investment in such a subsidiary to be deducted from the bank's capital;

(3) Requires that the FDIC be given prior notice before an insured nonmember bank acquires or establishes a subsidiary that engages in any securities activity;

(4) Places certain restrictions on transactions between a bank and its securities subsidiary; and

(5) Requires that customer disclosures be given under certain circumstances.

Section 337.4 of the FDIC's regulations was adopted in 1984 in order to address the safety and soundness and conflicts of interest concerns that can arise if an insured nonmember bank has a subsidiary which engages in securities activities of the sort that are not permissible under the Glass-Steagall Act for the parent bank. In proposing the exception under part 362, the FDIC indicated that it was satisfied that the restrictions contained in § 337.4 adequately address those concerns and that no significant risk to the fund will arise if a state nonmember bank conducts securities activities through a subsidiary in accordance with those restrictions. Comment was specifically requested on that conclusion. All of the comments which addressed this proposed exception approved of the FDIC's conclusion and urged the FDIC to adopt the proposed exception.

The exception is being adopted in the final regulation (see § 362.4(c)(3)(iii)) with one amendment. As proposed, in order for the exception to operate, the parent bank was required to be adequately capitalized as that term is defined for purposes of § 325.103(b)(2) of the FDIC's regulations which defines adequately capitalized for the purposes of prompt corrective action. This language has been dropped from the exception as adopted in final. The language was originally included in the proposal at least in part because the FDIC had proposed a similar capital deduction as a standard condition for approval of applications under what was proposed as § 362.4(d). As is discussed at length below, the standard conditions provision of the proposal has not been retained in the final regulation. Thus the need for similar language no longer exists. Insured nonmember banks should note, however, that § 337.4 and part 325 of the FDIC's regulations continue to require that the parent bank's investment in the securities subsidiary be deducted from the bank's capital.

(d) *Equity securities held by a majority-owned subsidiary.* As indicated above, the FDIC sought comment on whether the final regulation should contain any exceptions that would allow an insured state bank to hold equity securities at the subsidiary level. The FDIC received a number of comments which expressed the opinion that, in particular circumstances, a majority-owned subsidiary should be able to do so without first seeking the FDIC's prior consent. Sixteen comments indicated that state law in Massachusetts permits a state bank to establish a subsidiary to hold the equity security and investment company share of investments that the bank is permitted to make under state law. Those investments if made directly by the bank are eligible for the "grandfather" provided for by section 24(f) of the FDI Act and § 362.3(b)(4) of part 362. According to these comments, such subsidiaries should be given the same treatment accorded to the bank, i.e., if the bank is permitted by the FDIC to exercise its direct investment authority, the bank should be permitted to invest in those securities and investment company shares through a subsidiary without seeking the FDIC's prior approval.

Six comments supported an exception which would permit a subsidiary to hold equity securities without obtaining the FDIC's prior approval. One of the six indicated that there should be no limit on the amount or nature of such equity securities and another indicated that holding equity securities without prior approval should be limited to an amount equal to 20% of the bank's tier one capital. The remaining four comments did not express an opinion on how, if at all, the holding of equity securities through a subsidiary should be limited in order for an exception to apply. One comment suggested that the final regulation contain an exception for a subsidiary that holds the equity securities of a company which engages in activities that have been found to be closely related to banking for the purposes of section 4(c)(8) of the Bank Holding Company Act. One comment, while not requesting an exception per se, did point out that in the state of Pennsylvania insured state banks are authorized to invest in the stock of other banks. According to this comment, if the owner banks are not permitted to retain those securities, the bank's will suffer the loss of substantial income. The comment recognized that an owner bank could seek the FDIC's consent to hold the equity securities through a majority-owned subsidiary, but described that option as less than optimal.

After considering the comments, the FDIC has decided to amend the final regulation by adding four exceptions to required prior approval in the case of equity securities held through a majority-owned subsidiary. The four exceptions are discussed below.

(1) Grandfathered investments in common or preferred stock and shares of investment companies. Section 362.4(c)(3)(iv)(A) of the final regulation provides that any insured state bank that has received approval to invest in common or preferred stock or shares of an investment company pursuant to § 362.3(d) of part 362 may conduct the approved investment activities through a majority-owned subsidiary provided that any conditions or restrictions imposed with regard to the approval granted under § 362.3(d) are met. Section 362.3(d) provides that no insured state bank may take advantage of the "grandfather" provided for investments in common or preferred stock listed on a national securities exchange and shares of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1, et seq.) unless the bank files a notice with the FDIC of the bank's intent to make such investments and the FDIC determines that such investments will not pose a significant risk to the deposit insurance funds. In no event may the bank's investments in such

securities and/or investment company shares exceed 100% of the bank's tier one capital. The FDIC may condition its finding of no risk upon whatever conditions or restrictions it finds appropriate. The "grandfather" will be lost if certain events occur (see § 362.3(b)(4)(ii)).

The FDIC has concluded that, provided it has already been determined that the investment activities at the bank level do not present a significant risk to the funds, those same activities (subject to the same limits and any other conditions imposed by the FDIC) should likewise not present a significant risk to the fund if conducted through a majority-owned subsidiary. Given that determination, the above described exception has been added to the final regulation.

(2) Bank stock. Section 362.4(c)(3)(iv)(B) of the final regulation sets out an exception which allows an insured state bank to invest in up to ten percent of the outstanding stock of another insured bank without the FDIC's prior consent provided that the investment is made through a majority-owned subsidiary which was organized for the purpose of holding such shares. This exception is being added to the regulation in response to the comments which sought relief for those state banks which are permitted under state law to invest in the stock of other banks. Insured state banks should note, however, that the holding of such shares must of course be permissible under other relevant state and federal law.

The FDIC has become aware that some insured state banks own a sufficient interest in the stock of other insured state banks to cause the bank which is so owned to be considered a majority-owned subsidiary under part 362. It is the FDIC's posture that such an owner bank does not need to file a request under part 362 seeking approval for its majority-owned subsidiary that is an insured state bank to conduct as principal activities that are not permissible for a national bank. As the majority-owned subsidiary is itself an insured state bank, that bank is required under part 362 and section 24 of the FDI Act to request consent on its own behalf for permission to engage in any as principal activity that is not permissible for a national bank.

(3) Stock of a corporation that engages in activities that are permissible for a bank service corporation. Section 362.4(c)(3)(iv)(C) of the final regulation provides an exception to prior consent in the case of a majority-owned subsidiary that is organized for the purpose of investing in 50% or less of the stock of a corporation which engages solely in an activity that is permissible for a bank service corporation. "Bank service corporation" is defined for the purposes of the exception to have the same meaning as is used for the purposes of the Bank Service Corporation Act (12 U.S.C. 1861 et seq.). The purpose of the exception is to permit an insured state bank to own a portion of the stock of a corporation which engages in any activity that would be permissible for a bank service corporation. The exception specifically provides, however, that it shall not be construed to permit an insured state bank to indirectly (without the FDIC's prior consent) hold the stock of a company through a majority-owned subsidiary in an amount in excess of any limitation placed on such holdings by part 362.

The activities in which a bank service corporation may engage are set out in the Bank Service Corporation Act and include, among other things, any activity that has been found to be closely related to banking for the purposes of section 4(c)(8) of the Bank Holding Company Act as well as any activity that is permissible for a national bank. Under the exception, an insured state bank is permitted to create a subsidiary that will hold the bank's, in many cases, minority investment in a company the remainder of the stock of which is owned by other companies (often times but not always banks) provided that the corporation solely engages in an activity in which a bank service corporation may engage. The corporation is not required, however, to itself qualify as a bank service corporation.

The FDIC has encountered situations in which an insured state bank may not lawfully directly hold a minority interest in a corporation even if that corporation solely engages in an activity that is "closely related to banking" or engages in an activity that is permissible for a national bank. The authority of national banks to hold equity securities of other corporations is limited in a number of ways. For the most part, a national bank's authority to hold the equity of another corporation is limited to holding 80% or more of the stock of a company which engages in national bank permissible activities or a national bank may own a minority interest in the stock of a bank service corporation. (One of the purposes of the Bank Service Corporation Act was to provide national banks the ability to own a minority interest in a corporation.) A bank service corporation is in turn required to be owned exclusively by banks and exclusively by banks that are located in the same state. A bank service corporation also cannot take deposits. Thus, under section 24 of the FDI Act and § 362.3(a) of part 362, an insured state bank cannot directly hold a minority interest in a corporation unless that corporation qualifies as a bank service corporation. By adopting the exception described above, the FDIC is permitting an insured state bank (without the FDIC's prior consent) to invest through a majority-owned subsidiary in a corporation that is not a bank service corporation so long as the activities conducted by the corporation are activities in which a bank service corporation may engage.

(4) Stock of a corporation which engages in activities which are not considered to be "as principal". Section 362.4(c)(3)(iv)(D) of the final regulation creates an exception to prior approval for a majority-owned subsidiary of an insured state bank to hold 50% or less of the stock of a corporation which engages solely in activities that are not "as principal" activities. These activities if conducted directly by an insured state bank or conducted indirectly by a majority-owned subsidiary of an insured state bank would not be subject to part 362 at all. The FDIC has determined that in view thereof it is unwarranted to require an insured state bank to seek the FDIC's prior approval before indirectly owning the stock of a company which engages in such activities.

(e) *Investments in adjustable rate and money market preferred stock.* Section 362.2(g) of part 362 defines the term equity security in such a way as to exclude adjustable rate preferred stock and money market (auction rate) preferred stock. The FDIC adopted this exclusion as it was the agency's determination that money market (auction rate) preferred stock and adjustable rate preferred stock are essentially substitutes for money market investments such as commercial paper and that such preferred instruments are closer in their characteristics to debt than they are to equity. In doing so, the FDIC noted that whether or not a state bank may make investments in such preferred stock instruments after December 19, 1992 depends upon, among other things, whether a national bank can make similar investments. (57 FR 53219, November 9, 1992).

It is the FDIC's understanding that national banks are not permitted to invest in money market (auction rate) preferred stock and adjustable preferred stock. Thus, absent an exception, an insured state bank is required to obtain the FDIC's prior consent if the bank wishes to invest in such instruments. As indicated elsewhere above, several

comments urged the FDIC to adopt an exception that would allow insured state banks to make such investments without seeking the FDIC's consent. After carefully considering the comments, the FDIC has determined that it will not present a significant risk to the deposit insurance fund for an insured state bank to invest in money market (auction rate) preferred stock and/or adjustable rate preferred stock provided that such investments do not represent a concentration of assets. Accordingly, the final regulation contains an exception that will allow an insured state bank to make such investments without the FDIC's prior consent provided that such investments do not exceed 15% of the bank's total capital as that term is defined by the bank's appropriate federal banking agency. If an insured state bank wishes to make investments in excess of 15% of total capital, the bank must seek the FDIC's prior consent.

Application Requirements

Generally

Section 362.4(d) of the final regulation sets out the application requirements which must be followed if an insured state bank wishes to obtain the FDIC's consent to directly or indirectly engage in an otherwise impermissible activity. For the most part, § 362.4(d) is being adopted in final without many substantive changes from how it was proposed for comment (as a result of some restructing of the regulation the paragraph has been redesignated as (d) rather than (c)). There are a few substantive changes, however, which are discussed below. In addition, a number of subheadings have been added to the provision to make it easier to read. Insured state banks should note that approval granted pursuant to part 362 must necessarily entail an assessment and evaluation of the facts and circumstances (including the condition of the bank, the expertise of its management, etc.) at the time of the approval. If circumstances subsequent to the issuance of an approval order change, and those changes have a material impact in the FDIC's view on the effect the approved activities may have on the bank and/or the deposit insurance funds, the FDIC may take appropriate action to address those concerns including requiring the bank/subsidiary to modify or cease the activity.

As previously stated, except as otherwise specifically provided, no insured state bank may after December 19, 1992 directly engage as principal in any activity that is not permissible for a national bank, and no majority-owned subsidiary of an insured state bank may engage after that date as principal in any activity that is not permissible for a subsidiary of a national bank, unless the bank meets and continues to meet the applicable minimum capital standards prescribed by the appropriate federal banking agency and the FDIC determines that the conduct of the activity by the bank and/or its majority-owned subsidiary will not pose a significant risk to the affected deposit insurance fund. If an insured state bank has obtained the FDIC's consent under § 333.3 of the FDIC's regulations to engage in an activity that is not permissible for a federal savings association, and which is not permissible under part 362 without the FDIC's consent, the insured state bank does not need to obtain FDIC consent under this part in order to continue the activity. If the bank has a subsidiary that is engaging in an activity for which proper application has been made or granted, application will need to be made prior to the bank acquiring or establishing any other subsidiary even if that subsidiary is engaging in the same type of activity. The application for subsequent subsidiaries does not need to contain the same amount of information, however. There is no particular application form that must be used by an insured state bank, rather, the application may take the form of a letter.

Although the comments generally supported the concept of an applications process in which the FDIC makes its determinations concerning risk to the fund on a case-by-case basis, several comments believed that the process as proposed is too burdensome. Among the suggested alternatives were: (1) A 30-day notice for well-capitalized institutions; (2) an abbreviated notice and application procedure for well-capitalized banks; (3) a *de minimis* test below which prior FDIC consent would not be needed (one suggested cut-off was any activity that represents less than 2½ percent of the bank's total capital); (4) a system under which any activity that has been approved by the state upon review of an application made to the state should be excepted from the application requirement; and (5) a system whereby a state banking supervisory authority could make a blanket request on behalf of all banks in the state to conduct a particular activity. The FDIC has rejected each of these suggestions.

The FDIC is required under section 24 of the FDI Act to determine whether or not each proposed activity will present a significant risk to the fund, thus a notice requirement is not consistent with the law. Nor is a blanket approval process, or a process in which the FDIC accepts whatever determination the state has made with regard to an activity, consistent with the statute. The states typically focus on concerns other than the safety of the deposit insurance funds when empowering banks to engage in certain activities. That concern is uniquely the FDIC's and is one that the FDIC must take seriously. A blanket approval process would fail to take the individual circumstances of banks into consideration and is therefore inappropriate. The FDIC has decided to reject the idea of abbreviating or eliminating the application process for a well-capitalized bank because capital is only one of several factors which the FDIC should consider in assessing what risk would be posed to the insurance funds by the activity in question. Although strong capital is an important factor in making the FDIC's determination, it is not the only factor and it would not be prudent for the FDIC to emphasize capital to the exclusion of other relevant factors such as management expertise. While adopting a *de minimis* test may initially have some appeal (if for no other reason than it would eliminate the need for some applications and thus reduce burden), the FDIC is concerned that there is no way to effectively gauge which activities are *de minimis*. A percentage of capital test may not take into account nonbook liabilities which can make up a significant part of the risk associated with some activities.

As previously indicated, section 24 of the FDI Act and part 362 require that a bank must meet its minimum capital requirements in order for the bank to obtain the FDIC's consent to conduct an otherwise impermissible activity. Under the proposal, a bank that was engaged as principal in an otherwise impermissible activity as of December 19, 1992 which did not meet the minimum capital requirements set by its appropriate federal banking agency was directed to cease the activity as soon as practicable but in no event later than six months after the effective date of the regulation unless the bank is expected to meet and does in fact attain the requisite capital level prior to that date. In that event, the bank would be permitted to apply for approval to continue the activity. (See § 362.4(c)(1)(iii) of the proposal.) The only comment the FDIC received which was directed to this provision requested that the FDIC give undercapitalized banks more time to cease otherwise impermissible activities by either

simply establishing a longer time period under the final regulation or by deciding each situation on a case-by-case basis. After considering this comment, the FDIC has decided to amend this provision somewhat in order to make it more consistent with other divestiture provisions of part 362 and to provide the FDIC and insured state banks additional flexibility. Accordingly, under the final regulation, the impermissible activity must cease as soon as practicable but in no event later than six months after the effective date of this section unless an extension is granted for good cause. The regulation provides that in no event may any extension exceed one year from the effective date of the regulation. In addition, the final regulation specifically addresses the situation in which an undercapitalized bank has a subsidiary which has impermissible equity investments in real estate. Such banks are required to divest the subsidiary, or the real estate investments owned by the subsidiary, as soon as practicable but in no event later than December 19, 1996. This divestiture date is consistent with the treatment accorded real estate investment throughout part 362.

Under the proposal, any insured state bank which has filed an application requesting consent to directly or indirectly continue any activity that is not permissible for a national bank or its subsidiary may continue to engage in the ongoing activity while the bank's application is pending. In no case, however, may the activity continue for more than six months after the effective date of the regulation unless the FDIC grants an extension of time or the bank's application is granted. (See 362.4(c)(1)(v) of the proposal.)

One comment approved of the six month time period. Two comments noted and objected to the fact that the FDIC had not imposed any time constraints on itself for processing applications. One comment noted that if the FDIC is unwilling to impose a maximum processing time on itself, the agency should provide that any application which is not denied prior to the expiration of a certain time period should be treated as approved. Both alternatives have been rejected by the FDIC.

The FDIC does not believe that it is in the best interests of the deposit insurance funds to establish a maximum processing time for applications or to consider nonaction to constitute approval. Nor would such an approval by default be consistent with section 24 of the FDI Act which, as stated previously, requires that the FDIC make an affirmative finding with respect to each activity. Moreover, imposing a maximum processing time would limit the FDIC's ability to fully consider particularly complex applications. The FDIC is sensitive to the needs of insured state banks to have applications resolved in as timely a fashion as possible and the FDIC intends to dispose of all applications as expeditiously as possible. It is also the FDIC's intention to grant extensions if the FDIC is unable to resolve applications prior to the expiration of the six month time period which is provided for under the regulation. In response to another comment which suggested that the final regulation set a time by which applications for consent to continue ongoing activities must be filed with the regional office, the final regulation has been amended to require that applications for request to continue an activity which was ongoing as of December 19, 1992 should be filed with the appropriate FDIC regional office within 60 days after the effective date of the regulation.

In response to comments which noted that the application process is onerous, the final regulation has been modified by adding a paragraph which allows a bank to satisfy its application requirement by filing a copy with the FDIC of an application filed with another agency regarding the particular activity. Section 362.4(d)(1)(vi) of the final regulation states that (unless the FDIC requests additional information) if an insured state bank has sought the approval of another federal or state regulatory authority to directly or indirectly engage in an activity for which consent is required under part 362, the application filing requirements of § 362.4(d) may be satisfied by submitting to the FDIC a copy of the request as filed with the other agency provided that the application contains all of the information that is otherwise required to be filed with the FDIC.

In addition, one comment requested that the final regulation establish a formal appeals process in the case of a denial of an application. This request was considered unnecessary as § 303.6(e) of the FDIC's rules and regulations (12 CFR 303.6(e)) already establishes procedures for reconsideration of the denial of any application. Lastly, several comments requested that the FDIC publish its decisions on applications filed pursuant to § 362.4(d). Although the FDIC is not undertaking to routinely make publicly available applications filed under part 362 and the agency's disposition of those applications, any publicly available portions of applications as well as final orders entered under part 362 will be made available upon request in accordance with the Freedom of Information Act and part 309 of the FDIC's regulations (12 CFR part 309). If the volume of requests received by the FDIC warrants it, the agency will reconsider this decision.

Application for Consent to Directly or Indirectly Engage for the First Time in an Impermissible Activity

Applications under § 362.4(d) of the final regulation for consent to directly or indirectly engage in an otherwise impermissible activity are to be filed with the FDIC regional director (supervision) for the FDIC region in which the insured state bank's principal office is located. The proposed regulation indicated that an application for consent to directly engage in an activity should contain the following information: (1) A brief description of the proposed activity, the manner in which it will be conducted, and the expected volume or level of the activity; (2) a copy, if any, of the bank's feasibility study, financial projections and/or proposed business plan regarding the conduct of the activity; (3) a citation of the state statutory or regulatory authority for the conduct of the activity; (4) a copy of the order from the appropriate regulatory authority granting approval for the bank to conduct the activity if such approval is necessary and has already been granted; (5) a copy of a resolution by the bank's board of directors or trustees authorizing the filing of the application; (6) a brief description of the bank's policy and practice with regard to any anticipated involvement in the activity by a director, executive officer or principal shareholder of the bank or any related interest of such person; (7) a description of the bank's expertise in the activity to be undertaken; and (8) such other information as requested by the FDIC. None of the comments raised any specific objections to this aspect of the proposal and it is therefore being adopted in final without change.

The proposal indicated that applications for consent to conduct an otherwise impermissible activity through a majority-owned subsidiary must contain the above information plus the following: (1) The amount of the bank's proposed equity investment in, and expected extensions of credit to, the subsidiary; (2) the bank's investment in, and extensions of credit to, other subsidiaries conducting the same type of activity, and (3) the bank's applicable capital ratio as of the date of the application exclusive of the bank's investment in the subsidiary.

The final regulation deletes the requirement that the bank submit its capital ratio exclusive of the bank's investment in the subsidiary. This item has been deleted as the final regulation no longer contains an automatic requirement that a bank's investment in its subsidiary is to be deducted from the bank's capital.

Under the regulation as adopted in final, if an insured state bank has previously obtained the FDIC's consent for a subsidiary to engage as principal in a particular activity, subsequent requests for consent for another subsidiary to engage as principal in the same activity need not contain as much information as the original request. The following information is required to be filed in the subsequent requests: (1) A brief description of the proposed activity along with an indication of the expected volume or level of the activity; (2) the amount of the bank's proposed investment in the subsidiary; and (3) the bank's investment in other subsidiaries conducting the same type of activity. This request for information is the same as was contained in the proposal with the exception that information concerning the bank's applicable capital ratios exclusive of the bank's investment in the subsidiary has been dropped for the reason noted above.

Application for Consent to Continue an Ongoing Activity

Under the final regulation insured state banks that wish to continue to directly engage in an ongoing activity that is otherwise impermissible must file an application with the FDIC which contains the following information: (1) A brief description of the activity and the manner in which it is presently being conducted along with an indication of the present and expected level of the activity; (2) a copy of the bank's management or business plan, if any, concerning the conduct of the activity; (3) a brief description of the bank's policy and practice regarding the involvement of directors, executive officers or principal shareholders, or any related interest of such persons, in the activity; (4) a summary of management's expertise to conduct the activity; (5) a citation of the state statutory or regulatory authority for the conduct of the activity; and (6) such other information as requested by the FDIC. This information is the same that was proposed to be submitted under the regulation as published for comment with the exception that the proposed regulation also required a bank to indicate how the current conduct of the activity differed from standard conditions set out in the proposal. That item has been dropped from the regulation as the final regulation no longer contains any "standard conditions" that will automatically be imposed in connection with an approval unless otherwise waived.

Under the final regulation applications for consent to continue to engage as principal through a subsidiary in an ongoing activity that is not permissible for a subsidiary of a national bank must contain: (1) A statement of the amount of the bank's investment in, and extensions of credit to, the subsidiary; (2) the aggregate amount of the bank's investment in all of the bank's subsidiaries that are engaged in the same activity; and (3) all of the information required to be submitted under § 362.4(d)(4)(ii). This portion of the final regulation is unchanged from the proposal with the exception that once again the reference to the bank's applicable capital ratio exclusive of the bank's investment in the subsidiary has been deleted.

Phase-out of Activities for Which Consent to Continue Has Been Denied

Section 362.4(c)(3)(i) of the proposal provided that insured state banks which have been denied consent to continue an ongoing activity must cease the activity as soon as practical, but in no event later than one year from the denial unless the FDIC sets a different time period. The proposal specifically indicated that the continued conduct of the activity during the divestiture period could be conditioned or restricted. This provision was included inasmuch as the primary reason for denial would be a finding that the activity presented a significant risk to the fund and thus it would be appropriate for the FDIC to take steps to ensure the safety of the deposit insurance funds while the activities were winding down.

Section 362.4(c)(3)(ii) of the proposal provided that if an insured state bank is denied consent to continue an ongoing activity through a subsidiary, the bank would be required to divest its equity interest in the subsidiary as quickly as prudently possible, but in no event later than December 19, 1996. In such event, the bank would be directed to submit a divestiture plan in accordance with the provisions of this part. Section 362.4(c)(3)(ii) as proposed was consistent with the statutory provisions contained in section 24(c) of the FDI Act which allow for a five year divestiture period for impermissible equity investments. Again, the proposal specifically indicated that the FDIC could condition or restrict the continued conduct of the activity during the divestiture period.

Section 362.4(c)(3)(ii) of the proposal also provided that an insured state bank could choose not to divest the subsidiary but rather to discontinue the impermissible activity. In that event, the activity would have to be discontinued as soon as practical but in no event later than one year from the date of denial. If the bank elected to discontinue the impermissible activity, the bank would have to file a notice with the appropriate regional office to that effect no later than 60 days after the bank was informed that its request for consent to continue the activity was denied.

Comment was requested on particular problems and concerns the timing of divestiture presented for banks which own subsidiaries that invest in real estate if an application to continue the activities of that subsidiary is denied.

Of the nine comments received regarding this section, three noted that the proposal allows a bank which is directly engaged in impermissible real estate equity investment activities up to December 19, 1996 to divest the real estate, however, if a bank decides to retain its subsidiary which engages in equity investments in real estate, those investments must be divested within one year. According to the comments, this disparity is unfair and a similar amount of time should be accorded the divestiture regardless of whether at the bank or the subsidiary level. Three comments indicated that the final regulation should clarify that the FDIC can extend the divestiture period for more than one year. According to these comments, the proposal as drafted could be read to allow for a shortening of the timeframe but not an extension of time. Four comments requested that the final regulation clarify the extent to which, if any, that a bank may continue to invest in or make additional advances to its real estate development subsidiary during the divestiture period if permission to retain that subsidiary is denied. Two comments noted that short divestiture periods could result in banks disposing of real estate at "fire sale" prices. Six comments suggested that the final regulation should allow a bank a longer time period in which to divest real estate held by the bank's majority-owned subsidiary. Three of the six noted that a national bank is allowed up to 10 years to divest its other real estate owned (ORE). One comment suggested that the final regulation should simply follow state laws regarding disposition of ORE. In that vein, one comment pointed out that section 24 of the FDI Act does not set a maximum time period

in which impermissible activities of a subsidiary must be terminated.

In response to these comments a statement has been added to both § 362.4(d)(5) (i) and (ii) as renumbered and adopted in final which provides that the FDIC may, in its sole discretion, establish a deadline for divestiture in excess of one year. This change adds flexibility to the final regulation by allowing for exceptions to be made on a case-by-case basis when structuring appropriate periods over which a bank and/or its majority-owned subsidiary must cease an impermissible activity. Additionally, under the final regulation, if a bank is denied permission to continue to make impermissible investments in real estate through a majority-owned subsidiary and the bank elects to divest the investments rather than to divest the subsidiary, the period of divestiture may extend to December 19, 1996.

Finally, § 362.4(d)(5)(ii) has been amended to specifically indicate that the FDIC may condition or restrict the conduct of any impermissible activity by a subsidiary during the phase out period. This language serves several purposes: It is consistent with the language found in § 362.4(d)(5)(i); it is consistent with the FDIC's obligation to ensure the safety of the deposit insurance funds; and it allows the FDIC to deal with circumstances such as additional investments in real estate projects during the divestiture period. The FDIC recognizes that additional investments in or advances to real estate projects during the divestiture period may be appropriate, and perhaps even necessary, for maintenance or other expenses reasonably designed to enhance marketability of the property, including completion of construction projects. The FDIC expects banks to include such cost estimates in their divestiture plans submitted to the FDIC. Whether or not such expenditures will be permitted depends upon all of the facts and circumstances but at a minimum the FDIC will need to conclude that the expenditures are consistent with the bank's obligation to make divestiture and that additional investments and/or advances will not jeopardize bank safety or soundness. The suggestion that the divestiture plan be extended to up to ten years for real estate activities was considered, but rejected. It was felt that the established deadline for divestiture of such investments should be consistent with provisions regarding divestiture of impermissible equity investments. Banks should note that December 19, 1996 is the latest acceptable date for divestiture and that the established divestiture period may expire prior to December 19, 1996 if it is believed that the real estate may prudently be divested in a shorter time period.

Conditions

The proposed regulation provided that any consent to conduct an otherwise prohibited activity would be subject to certain standard conditions unless specifically waived by the approving FDIC official. Those standard conditions were as follows.

If the approval involved conduct of an activity in a subsidiary of an insured state bank, approval would be conditioned upon: (1) The subsidiary meeting all of the criteria necessary for a bona fide subsidiary, and (2) the insured state bank being adequately capitalized exclusive of the bank's investment in the subsidiary. The proposal indicated that a bank which did not meet the adequate capital test after taking the capital deduction into consideration may, in the FDIC's discretion, be allowed to continue the conduct of otherwise impermissible activities through its subsidiary provided that the bank was expected to be adequately capitalized no later than three years from the approval taking the capital deduction into account. Likewise, the proposal indicated that the FDIC could in its discretion approve an application for a subsidiary to continue its ongoing activities despite the fact that the subsidiary did not meet the definition of a bona fide subsidiary provided that the subsidiary was expected to qualify as a bona fide subsidiary no later than six months from the approval of the application.

If the approval involved the direct conduct of an otherwise impermissible activity, it would be condition upon: (1) The activity being conducted in a division of the bank which meets all of the criteria for a department, and (2) the bank being adequately capitalized exclusive of the bank's investment in the division. Again, the proposal indicated that the FDIC could in its discretion permit the continuation of an ongoing activity even if the bank would not be adequately capitalized after taking the capital deduction into account provided that the bank was expected to meet that standard within three years. Similarly, the proposal indicated that the FDIC may in its discretion allow a bank to continue an ongoing activity in a division that does not meet the criteria for a department if the necessary adjustments to make the division a department are made within six months from the approval.

The preamble accompanying the proposed regulation indicated that the above described conditions should be considered standard conditions and that exceptions would only be granted if the applicant could demonstrate that other features of the bank's proposal would provide a similar degree of protection for the insured bank.

With few exceptions, the comments which addressed the standard conditions as set out in the proposal objected to the conditions being automatically imposed by way of the regulation. According to these comments, the conditions should only be imposed, if at all, on a case-by-case basis. Among these comments were nine which objected to the capital deduction as being unnecessary. One of these comments objected to the deduction on the basis that it goes beyond the FDIC's authority under section 24 of the FDI Act and another indicated that forcing a bank to deduct its investment in its subsidiary from the bank's capital will simply provide the bank with an incentive to thinly capitalize the subsidiary. Four comments indicated that the FDIC should not impose the requirement that the bank's subsidiary meet the definition of a bona fide subsidiary unless the FDIC can demonstrate that there is a clear and unusual risk posed to the bank by the subsidiary. These comments had the same objection to requiring in-house activities to be conducted in a department. Requiring a department would not make any business sense, according to these comments, unless the business to be conducted by the department represents a significant line of business for the bank. In addition, the department requirement will impose added expenses and limit a bank's flexibility in conducting business. The comments which focused on the department requirement also indicated that as state statutes are unlikely to require that the assets and liabilities of a department are to be separate from the remainder of the bank's assets and liabilities, imposing a department requirement in connection with in-house activities will force activities into subsidiaries. Lastly, one comment expressed the opinion that requiring the bank's subsidiary to be a bona fide subsidiary anytime the subsidiary conducts activities beyond those authorized to subsidiaries of a national bank will kill the dual banking system.

After carefully considering the comments, the Board of Directors has decided to adopt a case-by-case approach in determining whether to impose any conditions on approvals. Section 362.4(f) of the final regulation specifically indicates that approvals granted pursuant to § 362.4(d) of the

final regulation may be made subject to any conditions or restrictions found by the FDIC to be necessary to protect the bank and/or the deposit insurance funds from risk, to prevent unsafe or unsound banking practices, and/or to ensure that the activity is consistent with the purposes of federal deposit insurance. The FDIC will thus consider in the context of each individual application whether it is appropriate, for example, to limit the investment a bank may make in its subsidiary or to impose structural restrictions such as the need for the bank's subsidiary to be a bona fide subsidiary.

Likewise, whether or not to require a bank to hold additional capital if its application is to be approved will be handled on a case-by-case basis. In that regard, insured state banks should note that section 18 of the FDI Act as amended by FDICIA (12 U.S.C. 1828) specifically directs the FDIC to take "nontraditional" activities of banks and their subsidiaries into account for the purposes of risk-based capital. Insured state banks should note that some securities activities that are subject to § 337.4 of the FDIC's regulations are required to be conducted in a bona fide subsidiary and that the bank's investment in such a subsidiary is deducted from the bank's capital. Insured state banks should also note that § 362.4(f) of the final regulation requires grandfathered insurance underwriting activities to be conducted in a bona fide subsidiary or a department (see discussion below). The Board of Directors has already determined that it is appropriate in the case of certain insurance and securities activities to impose the bona fide subsidiary and department requirements as well as to take the bank's investment in its insurance or securities subsidiary (or department) into consideration in determining whether the activities may proceed.

Disclosures

Section 362.4(f) of the proposed regulation prohibited any insured state bank from directly or indirectly engaging in activities that are not permissible for a national bank or a subsidiary of a national bank unless the subsidiary or the department provided persons doing or about to do business with the subsidiary or department written disclosure that the products, goods or services offered by the subsidiary or department are not insured by the FDIC, are not guaranteed by the bank, and that only the assets of the department or the subsidiary (as the case may be) are available to satisfy the obligations of, or any contractual claims arising in connection with, the operation of the subsidiary or department. The proposal specifically indicated that the disclosures could be tailored to fit the particular circumstances, that the disclosures must be signed by the customer acknowledging receipt, and that disclosures must occur prior to the time any contractual obligation to purchase any product, good or service arises. The proposal also indicated that should state law or regulation impose substantially similar disclosure requirements, compliance with the state requirements will constitute compliance with the disclosure requirements imposed under this section.

The disclosure requirements as proposed applied whether or not the subsidiary of the bank was required to be a bona fide subsidiary and also applied whether or not the regulation provided an exception under which the requirement for prior consent from the FDIC for the bank to directly or indirectly engage in the particular activity had been waived. Lastly, any other disclosure provision specifically applicable to a set of circumstances under the regulation would take precedence over § 362.4(f), e.g. insured state banks whose savings bank life insurance activities are excepted from the regulation would be covered by the disclosure provisions found in § 362.3(b)(3) rather than those set out in proposed § 362.4(f).

Comment was requested on the need for disclosure; whether disclosure should only be required in instances in which customers are likely to be confused as to whether the product or service is insured by the FDIC; whether advertisements, promotions or solicitations should include similar disclosures; and whether advertisements, etc. "stuffed" in bank customer account statements should be required to contain disclosures.

The FDIC received twenty-five comments on the proposed disclosure provision. Seven comments approved of the disclosure paragraph as written; six comments thought that the disclosures did not need to be so comprehensive; three comments indicated that it was not necessary to obtain a signature on the disclosures; four comments requested that the regulation give banks the flexibility of tailoring the disclosures to fit the particular circumstances; four comments expressed the opinion that disclosures should only be required when there is a likelihood of confusing the particular product or service with an insured deposit; and one comment indicated that "stuffers" and other advertisements should contain the disclosures.

The disclosure paragraph of the final regulation has been amended somewhat in response to the comments. In addition, it has been redesignated as paragraph (e). Under the final regulation, the disclosures do not need to be signed by the customers and only those banks which are required to file an application pursuant to § 362.4(d) of the final regulation and which receive approval to engage in an otherwise impermissible activity will be required to make disclosure. Even then, such banks are not automatically required to put language in their disclosure regarding which assets of the bank are available to satisfy the obligations of, or any contractual claims arising in connection with, the conduct of the approved activity. Thus, if the FDIC approves the direct conduct by an insured state bank of a particular activity and the activity is not required by the FDIC to be housed in a department of the bank, the disclosure does not need to indicate what assets of the bank are available to satisfy any claims arising in connection with that activity. That particular disclosure may be required, however, if approval of the application is granted on the condition that the activity be housed in a department.

Language has been added to the final regulation clarifying that the disclosures must be prominent and must be clearly labeled "customer disclosure". In addition, the final regulation requires that any communications from the bank to its customers which contain advertisements, promotions, or solicitations regarding the activities of the bank or any of its subsidiaries (e.g., statement stuffers) must contain the disclosures if those activities required approval pursuant to § 362.4(d) of the regulation. Finally, the final regulation allows for the waiver of the requirement to disclose that a particular product or service is not an insured deposit if it is determined by the FDIC that the likelihood of a customer confusing the product, good, or service with an insured deposit is minimal. Although the final regulation does not expressly require disclosures in the case of joint advertisements, the FDIC may determine on a case-by-case basis that such disclosures are necessary in which case the approval granted pursuant to § 362.4(d) will be expressly conditioned in that manner based upon § 362.4(f) of the final regulation which allows the FDIC to impose conditions as appropriate.

Transaction Restrictions

Section 362.4(e) of the proposed rule set forth restrictions on transactions between a bank and its departments and/or bona fide subsidiaries. The proposed restrictions were designed:

(1) To prevent an insured state bank from engaging in any transactions (including extensions of credit) with any of its bona fide subsidiaries on terms or under circumstances that are less favorable than those for comparable transactions with or involving companies that are not subsidiaries of the bank nor which are otherwise affiliated with the bank;

(2) To prevent an insured state bank from purchasing as fiduciary any asset or product from any of its bona fide subsidiaries, or obtaining as fiduciary any service from any of its bona fide subsidiaries, unless certain specified requirements were met;

(3) To prevent an insured state bank from entering into any contract with any of its bona fide subsidiaries that would violate any law or regulation, result in the breach of a fiduciary duty or adversely affect or misrepresent the bank's safety or soundness in any way;

(4) To prevent an insured state bank from making extensions of credit to any one of its bona fide subsidiaries in excess of ten percent of the bank's tier one capital; and

(5) To prevent an insured state bank from making extensions of credit in the aggregate to its bona fide subsidiaries in excess of twenty percent of the bank's tier one capital.

The preamble accompanying the proposed regulation stated that the transaction restrictions would close existing gaps in the regulation of insured state banks in that sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c–1) do not generally extend to subsidiaries of banks since the term "affiliate" as used in that statute does not generally include a subsidiary of a bank. The preamble also indicated that the proposed transaction restrictions simply restated the common law obligation of fiduciaries to refrain from self-dealing and were consistent with the prohibition against banks entering into adverse or illegal contracts which is found at section 30 of the FDI Act (12 U.S.C. 1831g).

Comments were requested on: (1) The need for the proposed restrictions, (2) what problems, if any, would be posed by the adoption of the proposed restrictions as worded, and (3) whether any additional restrictions should be adopted. Twelve comments addressed the proposed restrictions. The comments which addressed this area of the proposal objected to the provision as drafted because it was more complex and restrictive than necessary in order to protect the deposit insurance funds and to implement the statute. In addition, these comments indicated that there are other statutes and regulations which address the safety and soundness concerns which the transaction restrictions were designed to address. Thus, there is, according to these comments, no need to include the restrictions in the regulation. Several comments also objected to the provision on the grounds that the proposed transaction restrictions were not based upon any specific provision in section 24 of the FDI Act. None of the comments which were received suggested any additional restrictions that should be placed on transactions between state banks and their bona fide subsidiaries.

After carefully reviewing the comments, the Board of Directors has decided to drop the transaction restrictions from the final regulation and to adopt in its stead a case-by-case approach to the imposition of such restrictions. Any such restrictions, if necessary, will be imposed, if at all, in connection with individual applications. Insured state banks can expect that one or more of the restrictions will be imposed upon a finding by the FDIC that one or more of the transaction restrictions is necessary to prevent any adverse effect on the safety and soundness of a particular institution, is necessary to prevent a breach of the institution's fiduciary obligations, or is necessary to prevent any transaction that may pose a risk to the deposit insurance funds.

Conditions and Restrictions Applicable to Banks and Their Subsidiaries That Engage in Excepted Insurance Underwriting Activities

Under the proposal, an insured state bank was prohibited from directly or indirectly through a subsidiary underwriting insurance pursuant to the exceptions contained in § 362.3(b)(7) or § 362.4(b)(2) of part 362 unless the following conditions and restrictions were met: (1) Any insurance underwriting conducted directly by the bank must be done through a division of the bank that meets the definition of department; (2) any subsidiary that underwrites insurance must meet the definition of a bona fide subsidiary; and (3) the disclosure requirements of § 362.3(b)(3) and/or § 362.4(b)(1) must be met. The proposal specifically provided that any bank or subsidiary of a bank that is underwriting insurance as of the effective date of the regulation may continue to do so despite the adoption of the final regulation provided that the department and/or bona fide subsidiary requirement are met within one year from the effective date of the final regulation. The disclosure requirements must be met immediately, however, in order for the activities to continue.

The FDIC did not receive any comments on this provision. As the underwriting of insurance can involve material risks, the FDIC feels that it is prudent to separate those risks from the insured state bank. Therefore, the restrictions, as proposed, will become a part of the final regulation.

The FDIC did receive one comment in response to the request for comment on the impact of section 24 of the FDI Act on the investment portfolios of subsidiaries of insured state banks whose insurance underwriting activities are excepted by part 362 and section 24. The comment indicated that the FDIC should not consider the investment activities of such subsidiaries to be a separate and distinct activity from that of insurance underwriting. If the FDIC were to do so, then consent would have to be given for every investment the subsidiary might make which would not be permissible for a national bank. After considering this comment, the FDIC has decided to adopt the posture in the case of grandfathered insurance underwriting subsidiaries that the investment activities of such subsidiaries are not activities which are separate and apart from the business of insurance underwriting.

Delegation of Authority

Last, the delegations under part 362 are being amended to provide that the Executive Director, Supervision and Resolutions, has the authority to act on notices and applications under part 362 in addition to the Director, Division of Supervision, and the Director's designee.

Waiver of Delayed Effective Date

The final amendment is effective immediately upon publication in the **Federal Register**. The requirement under the Administrative Procedure Act (5 U.S.C. 553) to publish a substantive rule not less than 30 days prior to its effective date is being waived pursuant to the authority of section 553(d)(1) which allows such waiver in the case of a substantive rule which relieves a restriction.

Regulatory Flexibility Analysis

The Board of Directors has concluded after reviewing the final regulation that the regulation will not impose a

significant economic hardship on small institutions. The final regulation does not necessitate the development of sophisticated recordkeeping or reporting systems by small institutions nor will small institutions need to seek out the expertise of specialized accountants, lawyers, or managers in order to comply with the regulation. The Board of Directors therefore hereby certifies pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that the final regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 12 CFR Part 362

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Insured depository institutions, Investments.

In consideration of the foregoing, the FDIC hereby amends chapter III, title 12 of the Code of Federal Regulations by amending part 362 as follows:

PART 362—ACTIVITIES AND INVESTMENTS OF INSURED STATE BANKS

1. The authority citation for part 362 continues to read as follows:

Authority: 12 U.S.C. 1816, 1818, 1819 (Tenth), 1831a.

§ 362.1 [Amended]

2. Section 362.1 is amended by adding "and their subsidiaries" at the end of the first sentence and by adding "or their subsidiaries" after the words "undertaken by insured state banks" in the second sentence.

3. Section 362.2 is amended by revising the introductory text; redesignating paragraphs (a) through (c), (d) through (h), (i), and (j) through (p) as paragraphs (e) through (g), (i) through (m), (o), and (r) through (x), respectively; amending newly designated paragraph (x) by removing the final two sentences and adding "and § 362.4(c)(2)(i)" after "§ 362.3(b)(7)" where it appears in the second sentence; and adding new paragraphs (a) through (d), (h), (n), (p), and (q) to read as follows:

§ 362.2 Definitions.

For the purposes of this part, the following definitions apply:

(a) *Activity* refers to the authorized conduct of business by an insured state bank. *Activity* as used in connection with the direct conduct of business by an insured state bank includes acquiring or retaining any investment other than an equity investment. *Activity* as used in connection with the conduct of business by a subsidiary of an insured state bank includes acquiring or retaining any investment.

(b) The phrase *activity permissible for a national bank* shall be understood to refer to any activity authorized for national banks under the National Bank Act (12 U.S.C. 21 et seq.) or any other statute. Activities expressly authorized by statute or recognized as permissible in regulations, official circulars or bulletins issued by the Office of the Comptroller of the Currency or in any order or interpretation issued in writing by the Office of the Comptroller of the Currency will be accepted as permissible for state banks.

(c) An activity is considered to be conducted *as principal* if it is conducted other than as agent for a customer, is conducted other than in a brokerage, custodial, advisory or administrative capacity, or is conducted other than as trustee.

(d) *Bona fide subsidiary* means a subsidiary of an insured state bank that at a minimum:

(1) Is adequately capitalized;

(2) Is physically separate and distinct in its operations from the operations of the bank, however, this requirement shall not be construed to prohibit the bank and its subsidiary from sharing the same facility provided that the area in which the subsidiary conducts business with the public is clearly distinct from the area in which customers of the bank conduct business with the bank;

(3) Maintains separate accounting and other corporate records;

(4) Observes separate formalities such as separate board of directors' meetings;

(5) Maintains separate employees who are compensated by the subsidiary, however, this requirement shall not be construed to prohibit the use by the subsidiary of bank employees to perform functions which do not directly involve customer contact such as accounting, data processing and recordkeeping, so long as the bank and the subsidiary contract for such services on terms and conditions comparable to those agreed to by independent entities;

(6) Has no less than a majority of its executive officers who are neither executive officers nor directors of the bank;

(7) Has as a majority of its board of directors persons who are neither directors nor executive officers of the bank; and

(8) Conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the subsidiary that the subsidiary is a separate organization from the bank.

* * * * *

(h) *Department* means a division of an insured state bank that:

(1) Is physically distinct from the remainder of the bank;

(2) Maintains separate accounting and other records;

(3) Has assets, liabilities, obligations and expenses that are separate and distinct from those of the remainder of the bank; and

(4) As a matter of state statute, the obligations, liabilities and expenses of which can only be satisfied with the assets of the division.

* * * * *

(n) *Executive officer, director, principal shareholder, related interest,* and *extension of credit* shall have the same meaning as is relevant for the purpose of section 22(h) of the Federal Reserve Act (12 U.S.C. 375) and § 337.3 of this chapter.

* * * * *

(p) *Investment in a department* by an insured state bank means any transfer of funds by an insured state bank to one of its departments which is represented on the department's accounts and records as an accounts payable, a liability, or equity of the department except that transfers of funds to the department in payment of services rendered by that department shall not be considered an investment in the department.

(q) *Investment in a subsidiary* by an insured state bank shall mean the total of any equity investment in a subsidiary by an insured state bank, any debt issued by the subsidiary that is held by the insured state bank, and any extensions of credit from the insured state bank to the subsidiary.

* * * * *

§§ 362.4 and 362.5 [Redesignated as 362.5 and 362.6 Respectively and Amended]

4. Part 362 is amended by redesignating §§ 362.4 and 362.5 as §§ 362.5 and 362.6 respectively; newly designated § 362.6 is amended by removing everything after "is delegated to the" and adding "Executive Director, Supervision and Resolutions, and where confirmed in writing by the Executive Director, to the Director, Division of Supervision or the Director's designee."; by removing the comma after "§ 362.3(c)(2)" and adding in lieu thereof a semicolon; removing ", and" where it appears after "§ 362.3(d)" and adding a semicolon; and adding after "§ 362.3(b)(7)(ii)" the words "; and the authority to approve or deny requests for consent pursuant to § 362.4(d) as

well as to take any other action authorized by § 362.4(d)".

5. Part 362 is amended by adding a new § 362.4 to read as follows:

§ 362.4 Activities of insured state banks and their subsidiaries.

(a) *General prohibitions.* (1) Except as otherwise provided in this part, after December 19, 1992, an insured state bank may not directly engage as principal in any activity that is not permissible for a national bank, and a majority-owned subsidiary of an insured state bank may not engage as principal in any activity that is not permissible for a subsidiary of a national bank, unless the bank meets and continues to meet the applicable minimum capital standards prescribed by the appropriate federal banking agency and the FDIC determines that the conduct of the activity by the bank and/or its majority-owned subsidiary will not pose a significant risk to the affected deposit insurance fund. Applications for consent to directly, or indirectly through a majority-owned subsidiary, engage as principal in activities that are not permissible for a national bank or a subsidiary of a national bank should be filed in accordance with § 362.4(d). An insured state bank must file an application for each subsidiary regardless of whether the bank previously obtained consent for a subsidiary to engage as principal in the same activity. An insured state bank that obtained the FDIC's consent pursuant to § 333.3 of this chapter prior to that section's repeal to directly or indirectly through a subsidiary engage as principal in an activity that was otherwise impermissible under § 333.3 of this chapter and which is impermissible under this part without the FDIC's consent, does not need to obtain the FDIC's consent pursuant to this part in order to continue the activity.

(2) Except as otherwise provided in this part, no insured state bank may directly or indirectly through a subsidiary, engage in insurance underwriting except to the extent such activities are permissible for a national bank.

(b) *Phase-out for banks that do not meet capital standard.* (1) Any insured state bank which does not meet the applicable minimum capital requirements set out in paragraph (a)(1) of this section and which as of December 19, 1992, directly, or indirectly through a subsidiary, engaged as principal in any activity that is not permissible for a national bank or a subsidiary of a national bank, must cease the impermissible activity as soon as practicable but in no event later than June 8, 1994, unless an extension is granted by the FDIC for good cause.

(2) In no event shall any extension granted pursuant to this paragraph exceed one year from December 8, 1993. If the insured state bank is expected to meet the requisite capital level prior to June 8, 1994, the bank may apply for permission to continue the activity. An insured state bank that does not meet the requisite capital requirements, and which has a majority-owned subsidiary that has equity investments in real estate which are not permissible for a subsidiary of a national bank, must divest the subsidiary or the equity investments in the real estate as soon as practicable but in no event later than December 19, 1996.

(c) *Exceptions*—(1) *Savings bank life insurance.* Any insured state bank that is located in Massachusetts, New York or Connecticut that is otherwise authorized to do so is not prohibited from engaging in the underwriting of savings bank life insurance *provided that:*

(i) The FDIC does not alter its determination made pursuant to section 24(e)(2) of the FDI Act (12 U.S.C. 1831a(e)) that such activities do not pose a significant risk to the insurance fund of which the bank is a member;

(ii) The insurance underwriting is conducted through a division of the bank that meets the definition of "department" contained in § 362.2(h); and

(iii) The bank discloses to purchasers of life insurance policies, other insurance products and annuities which are offered to the public that the policies, other insurance products and annuities are not insured by the FDIC and that only the assets of the insurance department may be used to satisfy the obligations of the insurance department. The disclosure must be made prior to the time of purchase of the insurance policy, other insurance product, or annuity; must be prominent; and must be in a separate document clearly labeled "consumer disclosure" if the disclosure does not appear on the face of the policy, other insurance product, or annuity. The following or a similar statement will satisfy the disclosure obligation: "This [insurance policy, other insurance product, annuity] is not a federally insured deposit and only the assets of the bank's insurance department may legally be used to satisfy any obligation of that department." If state law or regulation provides for substantially similar disclosure requirements, compliance with the state imposed disclosure requirements will satisfy the requirements of this paragraph.

(2) *Insurance underwriting.* (i) A well-capitalized insured state bank that was lawfully providing insurance as principal on November 21, 1991 may continue to provide insurance as principal in the state or states in which the bank did so on November 21, 1991 so long as the insurance that is provided is of the same type which the bank provided as of November 21, 1991 and the insurance is only offered to residents of that state, individuals employed in that state, and any other person to whom the bank provided insurance as principal without interruption since such person resided in, or was employed in, that state. In the case of resident companies or partnerships, the bank's as principal activities must be limited to providing insurance to the company's or partnership's employees residing in the state and/or to providing insurance to cover the company's or partnership's property located in the state.

(ii) Any insured state bank or any subsidiary thereof that engaged in the underwriting of insurance on or before September 30, 1991 which was reinsured in whole or in part by the Federal Crop Insurance Corporation may continue to do so.

(iii) Any title insurance subsidiary of an insured state bank described in § 362.3(b)(7)(iii) may continue to provide title insurance provided that none of the transactions described in § 362.3(b)(4)(ii) (other than a charter conversion) has occurred to the parent insured state bank since June 1, 1991.

(3) *Activities that do not present a significant risk.* The FDIC has determined that the following as principal activities do not represent a significant risk to the deposit insurance funds and that the listed activities may therefore be conducted by an insured state bank or its majority-owned subsidiary (as the case may be) without first obtaining the FDIC's prior consent provided that the bank is otherwise authorized to engage in the activity under state law, the conduct of the activity by the bank and/or its subsidiary is otherwise permitted under federal law and regulation, and the bank meets and continues to meet the applicable minimum capital standards as prescribed by the appropriate federal banking agency. The fact that prior consent is not required by this part does not preclude the FDIC from taking any appropriate action within its authority with respect to the activities if the facts and circumstances warrant such action.

(i) *Guarantee activities.* An insured state bank may:

(A) Directly guarantee the obligations of others as provided for in § 347.3(c)(1) of this chapter; and

(B) Directly offer customer-sponsored credit card programs, and similar arrangements, in which the insured state bank undertakes to guarantee the obligations of individuals who are its retail banking deposit customers, *provided, however,* that the bank must establish the creditworthiness of the individual before undertaking to guarantee his/her obligations.

(ii) *Activities that are closely related to banking.* An insured state bank may:

(A) Engage as principal in any activity that is not permissible for a national bank provided that the Federal Reserve Board by regulation or order has found the activity to be closely related to banking for the purposes of section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)), *provided, further however,* That this exception shall not be construed to permit the bank to directly hold equity securities that a national bank may not hold and which are not otherwise permissible investments for insured state banks pursuant to § 362.3(b); and

(B) Establish or acquire a majority-owned subsidiary which solely engages as principal in any activity that the Federal Reserve Board by regulation or order has found to be closely related to banking for the purposes of section 4(c)(8) of the Bank Holding Company Act.

(iii) *Securities activities conducted through a subsidiary of an insured nonmember bank.* An insured nonmember bank may conduct securities activities through a subsidiary of the bank in accordance with the requirements and restrictions of § 337.4 of this chapter in lieu of any requirement or restriction contained in this part.

(iv) *Equity securities held by a majority-owned subsidiary of an insured state bank.*— (A) *Grandfathered investments in common or preferred stock and shares of investment companies.* Any insured state bank that has received approval to invest in common or preferred stock or shares of an investment company pursuant to § 362.3(d) may conduct the approved investment activities through a majority-owned subsidiary of the bank without any additional approval from the FDIC provided that any conditions or restrictions imposed with regard to the approval granted under § 362.3(d) are met.

(B) *Bank stock.* An insured state bank may indirectly through a majority-owned subsidiary organized for such purpose invest in up to ten percent of the outstanding stock of another insured bank.

(C) *Stock of a corporation that engages in activities permissible for a bank service corporation.* An insured state bank may indirectly through a majority-owned subsidiary organized for such purpose invest in 50% or less of the stock of a corporation which engages solely in any activity that is permissible for a bank service corporation. (The term "bank service corporation" shall have the same meaning as is relevant for the purposes of the Bank Service Corporation Act (12 U.S.C. 1861 et seq.).) This exception shall not be construed to override any other limitation imposed by this part as to the amount of stock which may be held in a subsidiary without obtaining the FDIC's consent.

(D) *Stock of a corporation which engages in activities which are not "as principal".* An insured state bank may indirectly through a majority-owned subsidiary invest in 50% or less of the stock of a corporation which engages solely in activities which are not considered to be "as principal" as that term is defined in § 362.2(c).

(v) *Investments in adjustable rate and money market preferred stock.* An insured state bank may invest up to 15 percent of the bank's total capital (as that term is defined by the appropriate federal banking agency) in adjustable rate preferred stock and money market (auction rate) preferred stock.

(d) *Application for consent to directly, or indirectly through a majority-owned subsidiary, engage as principal in an activity that is not permissible for a national bank.*—(1) *Timing and place of filing application.* All applications for consent pursuant to paragraph (d) of this section should be filed with the regional director for the Division of Supervision for the FDIC regional office in which the insured state bank's principal office is located. Applications for consent to continue an activity in which an insured state bank and/or its majority-owned subsidiary was engaged as of December 19, 1992, must be filed with the appropriate regional office no later than February 7, 1994.

(2) *Continuation of activity while application is pending.* Any insured state bank which has filed an application in accordance with paragraph (d)(1) of this section requesting consent to directly or indirectly continue any ongoing activity may continue to engage in the activity while the application is pending provided, however, in no event may such an insured state bank or its subsidiary continue the activity for more than six months from the receipt of the application by the appropriate FDIC regional office unless the FDIC grants an extension or approval of the application has been granted.

(3) *Copy of application filed with another agency.* Unless the FDIC requests additional information, in a case in which an insured state bank has sought the approval of another federal or state regulatory authority to directly or indirectly engage in an activity for which consent is required under this part, the application filing requirements of paragraph (d) of this section may be satisfied by submitting to the FDIC a copy of the request as filed with such other regulatory authority provided that the request as filed with such authority substantially satisfies all of the information requirements of paragraph (d) of this section.

(4) *Form and content of application.*—(i) *Form.* Applications filed pursuant to § 362.4(d) may be in letter form.

(ii) *Applications for consent to directly engage as principal in activities that are not permissible for a national bank.* Applications for consent to begin for the first time to directly engage as principal in any activity that is not permissible for a national bank, as well as applications for consent to continue to conduct as principal an activity in which a bank was engaged as of December 19, 1992 which is not permissible for a national bank, shall contain the following:

(A) A brief description of the activity, the manner in which it is or will be conducted, and the present and expected volume or level of the activity;

(B) A copy, if any, of the bank's feasibility study, financial projections and/or business plan regarding the conduct of the activity;

(C) A citation to the state statutory or regulatory authority for the conduct of the activity;

(D) A copy of the order or other document from the appropriate regulatory authority granting approval for the bank to conduct the activity if such approval is necessary and has already been granted;

(E) A copy of a resolution by the bank's board of directors or trustees authorizing the filing of the application;

(F) A brief description of the bank's policy and practice with regard to any present or anticipated involvement in the activity by a director, executive officer or principal shareholder of the bank or any related interest of such a person;

(G) A description of the bank's expertise in the activity; and

(H) Such other information as requested by the FDIC.

(iii) *Applications for consent to engage as principal through a majority-owned subsidiary in activities that are not permissible for a subsidiary of a national bank.* Applications for consent to begin for the first time to conduct, as principal, through a majority-owned subsidiary activities that are not permissible for a subsidiary of a national bank, as well as applications for consent for the bank's majority-owned subsidiary to continue to conduct, as principal, activities in which the bank's subsidiary was engaged as of December 19, 1992 that are not permissible for a subsidiary of a national bank, shall contain the following information:

(A) The information described in paragraph (d)(4)(ii) of this section;

(B) The amount of the bank's existing and proposed investment in the subsidiary; and

(C) The bank's investment in other subsidiaries conducting the same type of activity.

(iv) If an insured state bank previously obtained consent for a majority-owned subsidiary to engage as principal in a particular activity, any subsequent request for consent for another subsidiary of the bank to engage as principal in the same activity may omit the information described in paragraph (d)(4)(ii) of this section.

(5) *Phase-out of activities for which consent to continue has been denied—*

(i) *Direct activity.* If a request filed pursuant to paragraph (d) of this section for consent to continue the direct conduct of an activity is denied, the bank must cease the activity as soon as practicable but in no event later than one year from the denial unless the FDIC specifically sets a different time which may in the FDIC's sole discretion be longer than one year. The FDIC may condition or restrict the conduct of the activity during the phase-out period as is deemed necessary in order to protect the affected deposit insurance fund.

(ii) *Activity in a majority-owned subsidiary.* If a request filed pursuant to paragraph (d) of this section for consent to continue the conduct of an activity through a majority-owned subsidiary of the bank is denied, the bank must divest its equity investment in the subsidiary as quickly as prudently possible but in no event later than December 19, 1996. The bank shall file a divestiture plan in accordance with § 362.3(c)(3) no later than 60 days after the bank receives notice that consent was denied. In the alternative, the bank may choose to discontinue the activity rather than divest its equity investment in the subsidiary in which case the activity must be discontinued as soon as practicable but in no event later than one year from the denial unless the FDIC specifically sets a different time period which may, in the FDIC's sole discretion, be longer than one year. If the bank elects to discontinue the activity rather than to divest the subsidiary, the bank must notify the FDIC of that decision no later than 60 days after the bank receives notice that consent was denied. The notice must be in writing and should be filed with the appropriate FDIC regional office. If an insured state bank is denied consent to continue impermissible equity investments in real estate through a majority-owned subsidiary and the bank elects to discontinue those investments rather than divest the subsidiary, the period of time which the subsidiary shall have to divest the equity investments in real estate shall not extend beyond December 19, 1996. The FDIC may condition or restrict the conduct of any activity during the phase-out period as it deems necessary in order to protect the affected deposit insurance fund.

(e) *Disclosures.* Except as otherwise provided herein, any approval of an application filed pursuant to § 362.4(d) shall be subject to the condition that the bank and/or subsidiary shall provide any persons doing or about to do business with the bank and/or subsidiary written disclosure that the products, goods or services offered by the bank and/or subsidiary are not insured by the FDIC. If the products, goods or services are offered by a subsidiary of the bank, the disclosure must also indicate that the products, goods or services are not guaranteed by the bank and that only the assets of the subsidiary are available to satisfy the obligations of, or any contractual claims arising in connection with, the operation of the subsidiary. If the products, goods or services are offered by a department of the bank, the disclosure must indicate that only the assets of the department are available to satisfy the obligations of the department. Disclosures must occur prior to the time any contractual obligation to purchase any product, good or service arises; must be prominent; and must be clearly labeled "customer disclosure". If any communications from the bank to its depositors contain advertisements, promotions, or solicitations pertaining to the activities of the bank or its subsidiary which were approved pursuant to § 362.4(d) those communications must contain a disclosure that the products, goods or services are not insured by the FDIC. Disclosures will not be imposed under this part if state law or regulation establishes disclosure requirements which are substantially similar to those contained in this paragraph. Disclosure that the product, good or service is not an insured deposit will not be required if it is determined by the FDIC that the likelihood of confusing the product, good, or service with an insured deposit is minimal.

(f) *Conditions.* Approvals granted pursuant to § 362.4(d) may be made subject to any conditions or restrictions found by the FDIC to be necessary to protect the bank and/or the deposit insurance funds from risk, to prevent unsafe or unsound banking practices, and/or to ensure that the activity is consistent with the purposes of federal deposit insurance.

(g) *Conditions and restrictions applicable to insured state banks and/or their subsidiaries that engage in insurance underwriting activities excepted under § 362.3(b)(7) or § 362.4(c)(2)(i).* (1) No insured state bank may directly or indirectly through a subsidiary underwrite insurance pursuant to the exception contained in § 362.3(b)(7) or § 362.4(c)(2)(i) unless the following conditions and restrictions are met:

(i) Any insurance underwriting directly conducted by the bank must be done through a division of the bank that meets the definition of "department" contained in § 362.2(h);

(ii) Any subsidiary that underwrites insurance must meet the definition of a "bona fide subsidiary" contained in § 362.2(d); and

(iii) The disclosure requirements of § 362.3(b)(3) and/or § 362.4(c)(1)(iii) are met to the same extent as they would be applicable if the bank and/or its subsidiary were conducting savings bank life insurance activities.

(2) Any insured state bank or a subsidiary of an insured state bank that would be eligible for the exception in § 362.3(b)(7) or § 362.4(c)(2) but for the requirements of paragraphs (g)(1)(i) or (g)(1)(ii) of this section may continue to conduct the insurance underwriting activities provided that the requirements of paragraph (g)(1)(iii) of this section are met and provided that the requirements of paragraphs (g)(1)(i) and (g)(1)(ii) of this section are met no later than one year from December 8, 1993.

By Order of the Board of Directors.

Dated at Washington, DC this 30th day of November, 1993.

Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 93-29774 Filed 12-7-93; 8:45 am]
BILLING CODE 6714-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-185-AD; Amendment 39-8756; AD 93-24-07]

Airworthiness Directives; Corporate Jets Limited Model BH/HS 125-600A, HS 125-700A, and BAe 125-800A Series Airplanes Equipped With a Sundstrand Turbomach Model T-62T-39 Auxiliary Power Unit (APU) Installed in Accordance With Supplemental Type Certificate (STC) SA1923SW

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Corporate Jets Model BH/HS 125-600A, HS 125-700A, and BAe 125-800A series airplanes. This action requires deactivation of the APU and revision of the Limitations Section of the Airplane Flight Manual to prohibit operation of the APU. This amendment is prompted by reports of failures of the sealant installed around the over-temperature sensor located in the fuel control enclosure box of the APU. The actions specified in this AD are intended to prevent such failures, which could allow fuel leakage from the APU into the fuel control enclosure box to leak into the aft equipment bay, thus creating a fire hazard.

DATES: Effective December 23, 1993.

Comments for inclusion in the Rules Docket must be received on or before February 7, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-185-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Arkansas Aerospace, Inc., Technical Publications Department, P.O. Box 3356, Little Rock, Arkansas 72203. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Rotorcraft Directorate, Special Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Peter W. Hakala, Propulsion and Powerplant Engineer, Certification Branch, ASW-192, FAA, Rotorcraft Directorate, Special Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76137-4298; telephone (817) 222-5790.

SUPPLEMENTARY INFORMATION: There have been several reports of failures of the sealant installed around the over-temperature sensor located in the fuel control enclosure box of the auxiliary power unit (APU) installed on certain Corporate Jets Model BH/HS 125-600A, HS 125-700A, and BAe 125-800A series airplanes that are equipped with a Sundstrand Turbomach APU Model T-62T-39, installed in accordance with Supplemental Type Certificate (STC) SA1923SW. Failure of the sealant has been attributed to incompatibility between the sealant material and the operating environment in the vicinity of the over-temperature sensor (i.e., temperature, type of fluids, etc.). Failure of the sealant could allow any fuel leakage from the APU into the fuel control enclosure box to leak into the aft equipment bay, thus creating a fire hazard. (There have been no reported fires in the aft equipment bay, however.)

Arkansas Aerospace, Inc., has issued Service Bulletin S.B. 49-72-02, Revision 1, dated August 13, 1993, that describes procedures for replacing the sealant installed around the over-temperature sensor located in the fuel control enclosure box of the APU with new sealant. The new sealant material has a different chemical structure that is more compatible with the operating environment in the vicinity of the over-temperature sensor; therefore, it is less susceptible to failure.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent failure of the sealant installed around the over-temperature sensor located in the fuel control enclosure box of the APU, which could allow any fuel leakage from the APU into the fuel control enclosure box to leak into the aft equipment bay, thus creating a fire hazard. This AD requires deactivation of the APU and revision of the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to prohibit operation of the APU. The FAA has determined that, since fuel leakage from the APU into the fuel control enclosure box could occur during operation of the APU, deactivation of the APU will eliminate the possibility of the addressed unsafe condition.

This AD also provides for an optional terminating action, which involves replacement of the sealant installed around the over-temperature sensor located in the fuel control enclosure box of the APU with new sealant. Such replacement, if accomplished, is required to be done in accordance with the Arkansas Aerospace service bulletin described previously. Once the new sealant is installed, the APU may be reactivated and the AFM revision may be removed.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact

concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–185–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–24–07 Corporate Jets Limited (Formerly British Aerospace, Hawker Siddeley Aviation, and De Havilland Aircraft Co., Ltd): Amendment 39–8756. Docket 93–NM–185–AD.

Applicability: Model BH/HS 125–600A, HS 125–700A, and BAe 125–800A series airplanes equipped with a Sundstrand Turbomach auxiliary power unit (APU) Model T–62T–39 installed in accordance with Supplemental Type Certificate (STC) SA1923SW; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the sealant installed around the over-temperature sensor located in the fuel control enclosure box of the APU, which could allow any fuel leakage from the APU into the fuel control enclosure box to leak into the aft equipment bay, thus creating a fire hazard, accomplish the following:

(a) Within 14 days after the effective date of this AD, deactivate the APU by pulling and collaring in the OFF position the circuit breakers for the APU ignition, APU fuel supply, and the electric power supply for the APU starter circuit.

(b) Within 14 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Operation of the Sundstrand Turbomach auxiliary power unit Model T–62T–39 installed in accordance with Supplemental Type Certificate SA1923SW is prohibited."

(c) Replacement of the sealant installed around the over-temperature sensor located in the fuel control enclosure box of the APU with new sealant, in accordance with Arkansas Aerospace, Inc., Service Bulletin S.B. 49–72–02, Revision 1, dated August 13, 1993, constitutes terminating action for the requirements of paragraphs (a) and (b) of this AD. After such replacement, the APU may be reactivated and the AFM revision may be removed.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Special Certification Office, FAA, Rotorcraft Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Special Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Special Certification Office.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on December 23, 1993.

Issued in Renton, Washington, on November 30, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–29693 Filed 12–7–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 91–ASW–24]

Revision of Class E Airspace: Las Cruces, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Class E airspace at Las Cruces, NM. An instrument landing system (ILS) standard instrument approach procedure (SIAP) has been developed for the Las Cruces International Airport at Las Cruces, NM. Controlled airspace extending upward from 700 feet above ground level (AGL) is needed to contain aircraft executing that approach. This action is intended to provide adequate Class E airspace for instrument flight rules (IFR) operations at Las Cruces International Airport.

EFFECTIVE DATE: 0901 UTC, March 3, 1994.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–624–5531.

SUPPLEMENTARY INFORMATION:

History

On January 12, 1993, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the transition area at Las Cruces, New Mexico, was published in the **Federal Register** (58 FR 3875). An ILS SIAP has been developed for the Las Cruces International Airport. The proposal was to revise the transition area at Las Cruces International Airport to provide controlled airspace to contain IFR operations during portions of the terminal operation and while transitioning between the enroute and terminal environments. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area," and airspace extending upward from 700 feet or more above the ground level is now Class E airspace.

Interested persons were invited to participate in this rulemaking

proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Other than the change in terminology, this amendment is the same as that proposed in the notice.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1994). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the Class E airspace located at Las Cruces, NM. The development of an ILS RWY 30 SIAP at Las Cruces International Airport has made this action necessary. The description of the transition area in the SNPRM (58 FR 3875, January 12, 1993) described the extension to the transition area for the nondirectional radio beacon (NDB) RWY 8 SIAP as the 101° bearing from the Las Cruces NDB. The 101° bearing is the final inbound approach course to the Las Cruces NDB, not the bearing from the NDB. The correct bearing from the NDB for this extension is 281°, the reciprocal of the inbound course. This final rule corrects the bearing describing the west extension as the 281° bearing from the Las Cruces NDB. The intended effect of this action is to provide adequate controlled airspace to contain IFR operations at this location.

The FAA has determined that this regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005: Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW NM E5 Las Cruces, NM [Revised]

Las Cruces International Airport, NM
(lat. 32°17'22" N., long. 106°55'19" W.)
Las Cruces NDB
(lat. 32°16'56" N., long. 106°55'25" W.)
Las Cruces ILS Localizer
(lat. 32°18'04" N., long. 106°55'56" W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Las Cruces International Airport; and that airspace extending upward from 700 feet above the surface within 1.4 miles each side of the ILS localizer southeast course extending from the 6.8-mile radius to 12.3 miles southeast of the airport, and within 8 miles west and 4 miles east of the 179° bearing from the Las Cruces RBN extending from the 6.8-mile radius to 16 miles south of the RBN, and within 2.5 miles each side of the 281° bearing from the Las Cruces RBN extending from the 6.8-mile radius to 7.5 miles west of the RBN.

* * * * *

Issued in Fort Worth, TX, on November 19, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–29929 Filed 12–7–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority to the Commissioner of Food and Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority by adding a new authority delegation from the Assistant Secretary for Health to the Commissioner of Food and Drugs. The authority being added concerns the implementation of fifteen sections of the Mammography Quality Standards Act of 1992 (Pub. L. 102–539). The delegation of these sections gives FDA the responsibility to ensure that mammography facilities meet reasonable quality standards under the new law. This delegation excludes the authority to submit reports to the Congress.

EFFECTIVE DATE: December 8, 1993.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: On January 14, 1981, the Secretary of Health and Human Services delegated to the Assistant Secretary for Health all of the authority vested in the Secretary under Title III of the Public Health Service Act (42 U.S.C. 262 *et seq.*), as amended. The Mammography Quality Standards Act of 1992 (the MQSA) (Pub. L. 102–539) amends Title III of the Public Health Service Act by adding to it a new subpart 3, part F. On June 1, 1993, the Acting Assistant Secretary for Health delegated to the Commissioner of Food and Drugs the authority to implement the following sections of the MQSA: Section 354(b) (42 U.S.C. 263b), which establishes a certificate requirement after October 1, 1994, for facilities wishing to conduct an examination or procedure involving mammography; section 354(c), which deals with the issuance and renewal of these certificates; section 354(d), which deals with the application for a certificate and with appeals of decisions denying applications; section 354(e), which deals with approval and withdrawal of approval of accreditation bodies, accreditation, compliance, revocation of accreditation, evaluation and report; section 354(f), which deals with quality standards and certification of personnel; section 354(g), which deals with inspection of facilities; section 354(h), which deals with sanctions; section 354(i), which deals with suspension and revocation of certification; section 354(j), which deals with injunctions; section 354(k), which deals with presenting material for judicial review of government sanctions;

section 354(l), which deals with a facility performance report; section 354(n), which deals with chartering an advisory committee and appointment of members, as well as establishing meetings and setting forth functions; section 354(o), which deals with consultation with other Federal agencies; section 354(q), which deals with the authorization of a State to carry out designated functions under the MQSA; and section 354(r), which deals with assessing and collecting fees.

FDA is amending § 5.10 *Delegations from the Secretary, the Assistant Secretary for Health, and Public Health Service Officials* (21 CFR 5.10) by adding new paragraph (a)(36) to incorporate this delegation to the Commissioner.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 is revised to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354, 361, 362, 1701–1706, 2101, 2125, 2127, 2128 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b, 264, 265, 300u–300u–5, 300aa–1, 300aa–25, 300aa–27, 300aa–28); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591; secs. 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660 (42 U.S.C. 300aa–1 note).

2. Section 5.10 is amended by adding new paragraph (a)(36) to read as follows:

§ 5.10 Delegations from the Secretary, the Assistant Secretary for Health, and Public Health Service Officials.

(a) * * *

(36) Functions vested in the Secretary under section 354(b) through (l) and (n), (o), (q), and (r) of the Public Health Service Act (section 2 of the Mammography Quality Standards Act of 1992 (Pub. L. 102–539)), as amended, which deal with the certification of mammography facilities. The delegation excludes the authority to submit reports to Congress.

* * * * *

Dated: December 2, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–29904 Filed 12–7–93; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[WA–20–1–6158; FRL–4811–7]

Approval and Promulgation of Implementation Plans: Washington

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Environmental Protection Agency (EPA) approves the technical correction to the Seattle-Tacoma ozone nonattainment boundary description. This correction was submitted by the Washington Department of Ecology on October 22, 1993 in order to clarify the boundary description published in the November 30, 1992 **Federal Register** notice. This action does not change the nonattainment boundary, and therefore is merely a technical correction.

EFFECTIVE DATE: This action will be effective on February 7, 1994, unless notice is received by January 7, 1994, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be submitted to Montel Livingston at the Region 10 addresss. Copies of the State's request and other information supporting this action are available for inspection during normal business hours at the following locations: United States Environmental Protection Agency, Region 10, Air Programs Development Section, 1200 Sixth Avenue (AT–082), Seattle, Washington 98101, and Washington Department of Ecology, P.O. Box 47600, Olympia, Washington 98504–7600.

FOR FURTHER INFORMATION CONTACT: Montel Livingston, Air Programs Development Section (AT–082), United States Environmental Protection Agency, Region 10, Seattle, Washington 98101, (206) 553–0180.

SUPPLEMENTARY INFORMATION:

I. Background

In the November 6, 1991 **Federal Register** notice, 56 FR 56847, the Seattle-Tacoma area was redesignated as nonattainment for ozone. This area includes King, Pierce, and Snohomish counties. In the November 30, 1992 **Federal Register** notice, 57 FR 56777, the legal description for this nonattainment area was provided. However, the legal description was difficult to interpret and therefore a technical correction was needed with greater detail and use of 1993 city limits and road names. The clarified Seattle-Tacoma ozone nonattainment boundary description is stated under "Designated Area" in the table at the end of this rulemaking action. The additional language is highlighted for easy reference.

II. Summary of Action

With this action EPA is approving the technical correction to the ozone nonattainment boundary description for Seattle-Tacoma. This action has no effect on the boundary area itself, but only clarifies the boundary description language.

III. Administrative Review

Under 5 U.S.C. 605(b), I certify that this revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

Nothing is this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but

simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The U.S. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 7, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 42 U.S.C. 7607(b)(2))

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: November 30, 1993.

Gerald A. Emison,

Acting Regional Administrator.

Part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 81.348 is amended in the table for "Washington-Ozone" by revising the entry for "Seattle-Tacoma Area" to read as follows:

§ 81.348 Washington.

* * * * *

WASHINGTON—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * * * * * *				
Seattle-Tacoma Area: The following boundary includes all of Pierce County, and all of King County except a small portion on the northeast corner and the western portion of Snohomish County: Starting at the mouth of the Nisqually river extend northwesterly along the Pierce County line to the southernmost point of the west county line of King County; thence northerly along the county line to the southernmost point of the west county line of Snohomish County; thence northerly along the county line to the intersection with SR 532; thence easterly along the north line of SR 532 to the intersection of I–5, continuing east along the same road now identified as Henning Rd, to the intersection with SR 9 at Bryant; thence continuing easterly on Bryant East Rd. and Rock Creek Rd., also identified as Grandview Rd., approximately 3 miles to the point at which it is crossed by the existing BPA electrical transmission line; thence southeasterly along the BPA transmission line approximately 8 miles to point of the crossing of the south fork of the Stillaguamish River; thence continuing in a southeasterly direction in a meander line following the bed of the River to Jordan Road; southerly along Jordan Road to the north city limits of Granite Falls; thence following the north and east city limits to 92nd St. N.E. and Menzel Lake Rd.; thence south-southeasterly along the Menzel Lake Rd. and the Lake Roesiger Rd. a distance of approximately 6 miles to the northernmost point of Lake Roesiger; thence southerly along a meander line following the middle of the Lake and Roesiger Creek to Woods Creek; thence southerly along a meander line following the bed of the Creek approximately 6 miles to the point the Creek is crossed by the existing BPA electrical transmission line; thence easterly along the BPA transmission line approximately 0.2 miles; thence southerly along the BPA Chief Joseph-Covington electrical transmission line approximately 3 miles to the north line of SR 2; thence southeasterly along SR 2 to the intersection with the east county line of King county; thence south along the county line to the northernmost point of the east county line of Pierce County; thence along the county line to the point of beginning at the mouth of the Nisqually River..				
* * * * * * *				

[1] The date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 93-29922 Filed 12-7-93; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[PP 0F3870/R2023; FRL-4739-4]

RIN 2070-AB78

Pesticide Tolerance for Imazethapyr

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is establishing a permanent tolerance for the sum of the residues of the herbicide imazethapyr, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridine carboxylic acid, as its ammonium salt, and its metabolite, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-(1-hydroxyethyl)-3-pyridine carboxylic acid, in or on corn grain, fodder, and forage at 0.1 part per million (ppm). The American Cyanamid Co. has fulfilled certain testing requirements to change the current tolerance with an expiration date to a permanent tolerance.

EFFECTIVE DATE: This regulation becomes effective on December 8, 1993.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 0F3870/R2023], may be submitted to the: Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708M, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 36027M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6800.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 27, 1992 (57 FR 22179), EPA issued a final rule which established tolerances for the sum of the residues of the herbicide imazethapyr, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridine carboxylic acid, as its ammonium salt and its metabolite, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-(1-hydroxyethyl)-3-pyridine carboxylic acid in or on corn grain, fodder, and forage at 0.1 part per million (ppm), with an expiration date of May 27, 1994. The tolerance with an expiration date was required by EPA to allow the petitioner, the American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540, time to revise the residue analytical method to make certain improvements and revisions which allow one method to be used for all imazethapyr corn tolerances and to conduct a second independent laboratory validation (ILV). The petitioner has now complied with the requirements, and adequate work has been done to improve the residue analytical method. EPA is amending 40 CFR 180.447 to establish permanent tolerances for the herbicide on the corn commodities.

Based on the information cited above and in the document establishing the time-limited tolerance for imazethapyr (57 FR 22179, May 27, 1992), the Agency has determined that when used in accordance with good agricultural practice, this ingredient is useful and that the tolerance will protect the public health. Therefore, EPA is establishing the tolerance as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk at the address given above. 40 CFR 178.20. A copy of the objections should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector. 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32.

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or raising tolerance levels or food additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 15, 1993.

Douglas D. Campt,
Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.447, by revising paragraph (c), to read as follows:

§ 180.447 Imazethapyr, ammonium salt; tolerances for residues.

* * * * *

(c) A tolerance is established for the sum of residues of the herbicide imazethapyr, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridine carboxylic acid, as its ammonium salt, and its metabolite, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-(1-hydroxyethyl)-3-pyridine carboxylic acid, in or on the following commodities:

Commodity	Parts per million

Commodity	Parts per million
Corn grain, fodder, and forage .	0.1

[FR Doc. 93-29833 Filed 12-7-93; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300292A; FRL-4646-3]

RIN 2070-AB78

Inert Ingredients of Semiochemical Dispensers; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is establishing an exemption from the requirement of a tolerance for residues of all inert ingredients of semiochemical dispenser products formulated with, and/or contained in, dispensers made of polymeric matrix materials, including the monomers, plasticizers, dispersing agents, antioxidants, UV protectants, stabilizers, and other inert ingredients. The exemption applies when the dispensers are used as carriers in pesticide formulations applied to growing crops only and when the dispensers are large enough to be removed from the site. EPA is issuing this regulation on its own initiative.

EFFECTIVE DATE: This regulation becomes effective on December 8, 1993.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP-300292A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: Connie Welch, Registration Support Branch (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Dr., 6th Fl., North Tower, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 18, 1993 (58 FR 43830), EPA issued a proprosal to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of components of semiochemical dispensers made of solid matrix polymeric materials (including the monomers, plasticizers, and other ingredients), when these dispensers are large enough to be removed from the site as inert ingredients (carriers) in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Four comments were received in response to the proposed rule. Three of the four commenters requested that the wording of the regulation regarding the components covered should be clarified to match the coverage described in the preamble. The language suggested by all three commenters is as follows:

> § 180.1122(a). All inert ingredients of semiochemical dispenser products formulated with and/or contained in dispensers made of solid matrix polymeric materials (including the monomers, plasticizers, dispersing agents, antioxidants, UV protectants, stabilizers and other inert ingredients), are exempted from the requirement of a tolerance when used in pesticide formulations for application to growing crops only. These dispensers shall conform to the following specifications: * * *.

The Agency has adopted the suggested language, with a minor change.

One commenter suggested an additional definition under § 180.1122(d) for semiochemical dispenser component. Since the term "component" has been removed from the regulation, this definition is not necessary.

Another commenter noted that the term "solid polymeric matrix" appeared to exclude "twist-tie" dispensers which contain a lumen in which the active ingredient and certain inerts initially reside, although the Agency used this dispenser as an example of what is to be included. The Agency has replaced the term "solid matrix polymeric" with "polymeric matrix" to clarify that "twist tie" dispensers are included in the regulation.

All of the commenters requested that the exemption be expanded to include broadcast application formulations. One commenter noted that certain broadcast formulations were less likely to lead to buildup of plastics in the environment. Another commenter requested that the Agency exempt all substances with molecular weights greater than 1,000 since EPA notes in exempting certain polymeric substances from a tolerance requirement that substances with such high molecular weights are not absorbed through the gastrointestinal tract and therefore "are generally incapable of eliciting a toxic response" even if ingested.

The Agency agrees that there may be certain advantages to some broadcast applications of semiochemicals over those products covered by the current exemption. However, the current exemption was developed independent of consideration of the toxicity of components based upon an evaluation that these dispensers had a low potential for contact with food and therefore were unlikely to lead to residues. Broadcast applications have a greater potential for residues, and the components of such products must be evaluated for toxicity. While many of the components used in these formulations may qualify for exemption as polymers, the Agency must make that determination on a case-by-case basis. The criteria used to make the determination include high molecular weight and other characteristics. The Agency has greatly shortened the time required to obtain exemption-from-tolerance for such polymers, but is not prepared to discontinue reviewing them.

Another comment noted that the size at which a dispenser could be removed from the field might vary. It noted that 1.25 inch polymeric fibers which can be hand applied to the stakes of staked tomatoes could, in theory, be removed, but to do so would be very difficult. As noted above, the generic exemption is based on the unlikelihood of the dispensers coming into contact with food and leave residues. The conditions include size, proximity to the raw agricultural commodity (RAC), and

method of application. The fiber dispensers applied to stakes of staked tomatoes would be covered by the exemption, because of their lack of proximity to the RAC and their discrete method of application, but broadcast application of a similar fiber would not.

Another commenter objected to the use of the term "point-source" which in pheromone terminology is used to differentiate pheromone formulations which provide a strong release of pheromones such that the mode of action could be that of "false trail following" rather than "habituation" or "adaptation." The Agency did not intend the term "point-source" to imply the technical definition of pheromone terminology. The Agency has changed the definition to read "* * *" to provide discrete application of the semiochemical(s) into the environment," and has similarly modified § 180.1122 (a)(2). This commenter also noted that it is incorrect to state that these semiochemicals are applied at less than peak naturally occurring background levels, but that the amount of pheromone in the atmosphere at any given time is less than peak naturally occurring levels. The Agency agrees and was merely referring to the time-release nature of the dispensers. The Agency believes that providing an exemption for the inert ingredients will facilitate development of appropriate time-release products and reduce the regulatory burden for this technology.

One commenter noted that these dispensers could cause environmental problems. Although EPA agrees that this could be the case, the Agency believes that these products are far better from an environmental perspective than the conventional alternatives. EPA encourages removal of the dispensers and development of biodegradable forms.

Another commenter suggested that the word "receptor" in the definition of semiochemical be changed to "receiving" since "receptor" has narrow, specific meanings related to particular types of proteins and to sensory nerve endings. This change is being made.

Finally, one commenter suggested exempting everything included under 21 CFR parts 173 to 178 and 40 CFR 180.1001(c) and (d), 180.1028, 180.1037, 180.1038, and 180.1062 and all inerts previously approved by the Agency for all types of semiochemical formulations. All of these substances will be exempted for use in dispensers covered by this regulation. In addition, the Agency plans to issue broader exemptions for those substances considered to be "minimal risk" inerts in the future, so that they may be used in a variety of products rather than being limited to specific uses. However, EPA does not have sufficient information to issue the broad regulation proposed by the commenter at this time.

Based on the information considered, the Agency concludes that tolerances are not necessary to protect the public health for the inert ingredients in the semiochemical dispenser products. Therefore, the tolerance exemptions are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector. 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12866. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or raising tolerance levels or food additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement of this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 15, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding new § 180.1122 to subpart D, to read as follows:

§ 180.1122 Inert ingredients of semiochemical dispensers; exemptions from the requirement of a tolerance.

(a) All inert ingredients of semiochemical dispenser products formulated with, and/or contained in, dispensers made of polymeric matrix materials (including the monomers, plasticizers, dispersing agents, antioxidants, UV protectants, stabilizers, and other inert ingredients) are exempted from the requirement of a tolerance when used as carriers in pesticide formulations for application to growing crops only. These dispensers shall conform to the following specifications:

(1) Exposure must be limited to inadvertent physical contact only. The design of the dispenser must be such as to preclude any contamination by its components of the raw agricultural commodity (RAC) or processed foods/feeds derived from the commodity by virtue of its proximity to the RAC or as a result of its physical size.

(2) The dispensers must be applied discretely. This exemption does not apply to components of semiochemical formulations applied in a broadcast manner either to a crop field plot or to individual plants.

(b) A semiochemical dispenser is a single enclosed or semi-enclosed unit that releases semiochemical(s) into the surrounding atmosphere via volatilization and is applied in a manner to provide discrete application of the semiochemical(s) into the environment.

(c) Semiochemicals are chemicals that are emitted by plants or animals and modify the behavior of receiving organisms. These chemicals must be naturally occurring or substantially

identical to naturally occurring semiochemicals.

[FR Doc. 93-29834 Filed 12-7-93; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300279B; FRL-4743-8]

RIN 2070-AB78

2-[Methyl[(Perfluoroalkyl)Alkyl(C_2-C_8)Sulfonyl] Amino]Alkyl(C_2-C_8)Acrylate-Alkyl(C_2-C_8)Methacrylates-N-Methylolacrylamide Copolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of 2-[methyl[(perfluoroalkyl)alkyl(C_2-C_8)sulfonyl]amino]alkyl(C_2-C_8)acrylate-alkyl(C_2-C_8)methacrylates-*N*-methylolacrylamide copolymer when used as an inert ingredient (water repellant agent) in pesticide formulations applied to animals. This regulation was requested by SmithKline Beecham Animal Health. The proposal elicited a comment stating that if the copolymer had a particular structure it would be subject to gastrointestinal (GI) metabolism resulting in the formation of toxic metabolites, and the comment is addressed in this document.

EFFECTIVE DATE: Effective on December 8, 1993.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP-300279B], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwared to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Rosalind L. Gross, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8354.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 10, 1993 (58 FR 13239), EPA issued a proposed rule that gave notice that SmithKline Beecham Animal Health, 1600 Paoli Pike, P.O. Box 2650, West Chester, PA, 19380-6014, had submitted pesticide petition (PP) 2E4147 requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of 2-[methyl [(perfluoroalkyl) sulfonyl] amino]alkyl (C_2-C_8) acrylate-alkyl (C_2-C_8) methacrylates-*N*-methylolacrylamide copolymer when used as an inert ingredient (water repellant agent) in pesticide formulations applied to animals.

Inert ingredients are ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk.

One comment was received in response to the proposed rule. The comment stated that if the copolymer had a particular structure it would be subject to gastrointestinal (GI) metabolism resulting in the formation of toxic metabolites. The comment reported that when certain perfluorinated sulfonyl copolymers were fed to ants, delayed toxicity was seen from a single feeding and caused concern regarding the exemption from the requirement of a tolerance for 2-[methyl[(perfluoroalkyl)sulfonyl] amino]alkyl(C_2-C_8) acrylate-alkyl (C_2-C_8) methacrylates-*N*-methylolacrylamide copolymer. The comment was withdrawn when it was learned that the perfluorinated sulfonyl copolymer had methylene units *alpha* and *beta* to the sulfonyl group, indicating that the presence of methylene units adjacent to the sulfonyl group altered the toxicological properties of the copolymer enough that the original comment was no longer relevant.

Although the comment was withdrawn, the possibility of GI absorption and/or metabolism of the copolymer caused the Agency to reevaluate the risks to human health and the environment from the proposed use of this copolymer. EPA finds it has no evidence that a copolymer with an average molecular weight of 50,000 and low water solubility would be absorbed or metabolized in the GI tract. Additionally, EPA acknowledges the name of the copolymer in the proposed rule was vague, resulting in potential confusion regarding the precise chemical structure of the copolymer. Therefore, the name of the copolymer in the final rule will be changed to more accurately reflect its chemical structure. The name of the copolymer in the final rule will appear as 2-[methyl [(perfluoroalkyl) alkyl(C_2-C_8) sulfonyl] amino]alkyl(C_2-C_8) acrylate-alkyl (C_2-C_8)methacrylates-*N*-methylolacrylamide copolymer.

Based upon the information considered and discussed in the proposed rule and here, EPA concludes that the tolerance exemption for residues of 2-[methyl [(perfluoroalkyl) alkyl (C_2-C_8)sulfonyl] amino]alkyl (C_2-C_8) acrylate-alkyl (C_2-C_8) methacrylates *N*-methylolacrylamide copolymer will protect the public health. Therefore, the exemption from the requirement of a tolerance for the copolymer will be established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by

40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 18, 1993

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(e) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* *	* * *	* *
2-[Methyl [(perfluoroalkyl)alkyl(C_2-C_8)sulfonyl] amino]alkyl(C_2-C_8) acrylate-alkyl(C_2-C_8)methacrylates-*N*-methylolacrylamide copolymer.	.....	Water repellant agent
* *	* * *	* *

[FR Doc. 93-29830 Filed 12-7-93; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP 300298A; FRL-4740-4]

RIN 2070-AB78

Definitions and Interpretations; Dry Bulb Onions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document amends the tolerance regulations (40 CFR part 180) to expand EPA's interpretations of the commodity term "onions (dry bulbs only)" to include shallots (dry bulbs only) for the application of tolerances and exemptions from the requirement of a tolerance for pesticide chemicals in or on the raw agricultural commodity dry bulb onions. The amendment is based, in part, on recommendations of the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective December 8, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (7505W), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 22, 1993 (58 FR 49263), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had requested that 40 CFR 180.1(h) be amended by revising the current interpretation for the general commodity term "onions (dry bulbs only)," which is listed in column A therein, by adding the specific commodity term "shallots (dry bulbs only)" to column B therein, so that the revised column B will read "garlic, onions (dry bulbs only), shallots (dry bulbs only)."

There were no comments received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that it is appropriate to expand the current general commodity "onions dry bulbs only" in 40 CFR 180.1(h) by adding the corresponding specific commmodity "shallots (dry bulbs only)" to the existing specific commodities garlic and onions (dry bulbs only).

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 24, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1(h) is amended by revising the specific commodities definition for "Onions (dry bulbs only)" to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(h) * * *

A	B
	* * * * * * *
Onions (dry bulbs only)	Garlic, onions (dry bulbs only), shallots (dry bulbs only)
	* * * * * * *

* * * * *

[FR Doc. 93-29832 Filed 12-7-93; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 228

[FRL-4807-9]

Ocean Dumping; Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA today revises the boundary coordinates for the Matagorda Ship Channel, Texas ocean dredged material disposal site. This action is necessary because most of the existing designated site has water depths too shallow to accommodate deep draft hopper dredges. The Corps of Engineers (COE) plans to utilize a hopper dredge requiring a 30 foot water depth and much of the existing disposal site is approximately 25 feet deep.

EFFECTIVE DATE: This designation shall become effective January 7, 1994.

ADDRESSES: Richard Hoppers, Chief, Water Quality Management Branch (6W-Q), EPA, 1445 Ross Avenue, Dallas, Texas 75202-2733.

Information supporting this designation is available for public inspection at the following locations:

EPA, Region 6, 1445 Ross Avenue, 9th Floor, Dallas, Texas 75202-2733.

Corps of Engineers, Galveston District, 2000 Fort Point Road, Galveston, Texas 77553.

FOR FURTHER INFORMATION CONTACT: Richard Hoppers 214/655-7135.

SUPPLEMENTARY INFORMATION:

A. Background

Title I of the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1401 *et seq.*, (hereinafter referred to as "the Act" or "the MPRSA") regulates the ocean dumping and transportation for purposes of ocean dumping of material. With few exceptions, the MPRSA prohibits the transportation of material from the United States for the purpose of ocean dumping except as may be authorized by a permit issued under the MPRSA. The EPA's regulations implementing the Act are set forth at 40 CFR parts 220 through 229.

The Act further provides that EPA may designate recommended times and sites for ocean dumping (MPRSA section 102(c)). EPA site designations specify the latitude and longitude of the site and also typically include limitations on the duration of use and type of materials which may be disposed of at the site. EPA's ocean dumping regulations (40 CFR 228.4(b)) provide that the designation of an ocean dumping site is accomplished by promulgation in part 228 specifying the site. The list of EPA-designated ocean dumping sites and the terms and conditions associated with each designated site appear at 40 CFR 228.12.

By final rule published on September 10, 1990, the EPA designated a dredged material disposal site in the Gulf of Mexico offshore of Port O'Connor, Texas for the continued disposal of dredged material removed from the Matagorda Ship Channel. The existing designated disposal site has never been used. The COE has now requested the EPA to modify the existing site boundaries to include more area with deeper depths (30 feet or greater) so that hopper dredges with deeper drafts could be utilized. For this reason the COE has asked that the site be shifted 3,00 feet seaward.

B. EIS Information

The EPA's Draft and Final Environmental Impact Statements (EIS) supporting designation of the existing site were distributed for public review in July, 1989 and July, 1990, respectively. The EIS alternative evaluation focused on sites located within ten statute miles of the project area, termed Zone of Siting Feasibility (ZSF). The ZSF was based on limits from: (1) The cost of transportation of dredged material; (2) the feasibility of monitoring and surveillance; and (3) political boundaries. Specific areas within the ZSF were excluded from consideration for such reasons as interference with biologically sensitive areas, recreationally important areas, jetty buffer or beach buffer zones, the presence of historic properties, etc. The modified disposal site lying 3,000 feet seaward of the existing disposal site is within the ZSF, an area thoroughly addressed in the EISs. The modified site will not encompass any of the ZSF excluded areas.

Five general criteria (§ 228.5) and eleven specific criteria (§ 228.6), which are used in the selection, evaluation and approval of an ocean disposal site, were addressed in the EISs for the existing site. The EIS criteria analysis is also applicable to the modified site. The impacts of disposal at the existing site are the same as those at the modified site. The dredged material proposed for disposal is clean material and meets the ocean dumping criteria. The only change necessary relates to the geographical position of the modified site. This site is approximately one half mile farther offshore. Instead of being 1.5 miles from the coast, the modified site is located about 2 miles from beaches and other amenity areas. Additional modification of the environmental evaluation is not appropriate or required.

C. Site Designation

The site is located approximately 2 miles from the coast at its closest point. While the water depth at the modified site ranges from 25 to 40 feet, most of the site has depths 30 feet or greater. The coordinates of the rectangular-shaped site are as follows: 28°23'48" N, 96°18'00" W; 28°23'21" N, 96°18'31" W; 28°22'43" N, 96°17'52" W; 28°23'11" N, 96°17'22" W.

D. Regulatory Assessments

Under the Regulatory Flexibility Act, the EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. The EPA has determined that

this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12866, the EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: November 12, 1993.

Barbara J. Goetz,

Acting Regional Administrator of Region 6.

40 CFR Part 228 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. In § 228.12, paragraph (b) (79) is amended by revising the "Location" discussion to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(79) * * *

Location: 28°23'48" N, 96°18'00" W; 28°23'21" N, 96°18'31" W; 28°22'43" N, 96°17'52" W; 28°23'11" N, 96°17'22" W.

* * * * *

[FR Doc. 93-29891 Filed 12-7-93; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7012

[AZ-930-4210-06; AZA-28027]

Partial Revocation of Secretarial Order Dated November 18, 1907; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial Order insofar as it affects 30 acres of National Forest System land withdrawn for use as an administrative site. The land is no longer needed for this purpose, and the revocation is needed to accommodate a proposed land exchange under the General Exchange Act of 1922. This action will open the land to such forms of disposition as may by law be made of National Forest System land. The land is temporarily closed to mining by a Forest Service exchange proposal. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: January 7, 1994.

FOR FURTHER INFORMATION CONTACT:

John Mezes, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602-650-0509.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Secretarial Order dated November 18, 1907, which withdrew National Forest System land for use as an administrative site, is hereby revoked insofar as it affects the following described land:

Gila and Salt River Meridian

Apache National Forest

T. 7 N., R. 27 E.,
Sec. 12, E½NE¼NW¼, and NW¼NE¼NW¼.

The area described contains 30 acres in Apache County.

2. At 10 a.m. on January 7, 1994, the land shall be opened to such forms of disposition as may by law be made of National Forest System land, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: November 19, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93-29874 Filed 12-7-93; 8:45 am]

BILLING CODE 4310-32-M

43 CFR Public Land Order 7014

[WY-930-4210-06; WYW 71191, WYW 128399]

Opening of Land, Under Section 24 of the Federal Power Act, and Partial Revocation, in Secretarial Order Dated July 16, 1934, Which Established Powersite Classification No. 286; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order opens 40 acres, subject to the provisions of section 24 of the Federal Power Act, and revokes 22.60 acres of a Secretarial order involving National Forest System lands, which established the Bureau of Land Management's Powersite Classification No. 286. The order will allow future land exchanges of Forest Service administered lands. The lands have been and continue to be open to mineral leasing, and under the provisions of the Mining Claims Rights Restoration Act of 1955, to mining.

EFFECTIVE DATE: December 8, 1993.

FOR FURTHER INFORMATION CONTACT:

Duane Feick, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307-775-6127.

By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, section 24, as amended, 16 U.S.C. 818 (1988); and section 204 of Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), and pursuant to the determination by the Federal Energy Regulatory Commission in DVWY-188, it is ordered as follows:

1. At 9 a.m. on December 8, 1993, the following described National Forest System land withdrawn by Secretarial Order dated July 16, 1934, which established Powersite Classification No. 286, will be opened to disposal by sale or exchange subject to the provisions of section 24 of the Federal Energy Regulatory Commission determination DVWY-188, and subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law:

Sixth Principal Meridian

Bridger-Teton National Forest

T. 40 N., R. 117 W.,
Sec. 15, SE¼SE¼.

The area described contains 40 acres in Teton County.

2. Secretarial Order dated July 16, 1934, which established Powersite

Classification No. 286, is hereby revoked insofar as it affects the following described National Forest System land:

Sixth Principal Meridian

Bridger-Teton National Forest

T. 40 N., R. 117 W.,
Sec. 15, lot 1.

The area described contains 22.60 acres in Teton County.

3. At 9 a.m. on December 7, 1993, the land described in paragraph 2 above shall be opened to such forms of disposition as may by law be made of National Forest System land, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: November 19, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93-29866 Filed 12-7-93; 8:45 am]

BILLING CODE 4310-22-M

43 CFR Public Land Order 7015

[ID-943-4210-06; IDI-15704-02, IDI-15701-02]

Partial Revocation of Secretarial Orders Dated September 29, 1922, and December 19, 1933, Which Established Powersite Classification Nos. 50 and 280; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes two Secretarial orders insofar as they affect 6.28 acres of National Forest System land withdrawn for the Bureau of Land Management's Powersite Classification Nos. 50 and 280 within the Payette National Forest. The land is no longer needed for the purpose for which it was withdrawn. This action will open the land to surface entry and will permit the disposal of the land by exchange. The land has been and will remain open to mineral leasing but will remain closed to mining due to overlapping withdrawals.

EFFECTIVE DATE: January 7, 1994.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706-2500, 208-384-3166.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Secretarial Orders dated September 29, 1922, and December 19, 1933, which withdrew National Forest System land for the Bureau of Land Management's Powersite Classification Nos. 50 and 280, are hereby revoked insofar as they affect the following described land:

Boise Meridian

T. 24 N., R. 8 E.,
sec. 32, tract 37.

The area described contains 6.28 acres in Idaho County.

2. At 9 a.m. on January 7, 1994, the land shall be opened to such forms of disposition as may by law be made of National Forest System land, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: November 19, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93-29867 Filed 12-7-93; 8:45 am]

BILLING CODE 4310-GG-M

43 CFR Public Land Order 7016

[MT-930-4210-05; MTM 81816]

Jurisdiction Transfer, Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order transfers exclusive jurisdiction and administration of the surface and mineral estates of 320 acres of public lands from the Bureau of Land Management to the United States of America, Bureau of Indian Affairs in trust for the Northern Cheyenne Tribe.

EFFECTIVE DATE: December 8, 1993.

FOR FURTHER INFORMATION CONTACT: Dee L. Baxter, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59101, 406-255-2943.

By virtue of the authority vested in the Secretary of the Interior by section 10(e) of the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992, Public Law 102-374 (106 Stat. 1192), it is ordered as follows:

1. Subject to valid existing rights and the terms of the Memorandum of Agreement dated July 16, 1993, jurisdiction of the surface and mineral estates for the following described lands are hereby transferred to the Bureau of Indian Affairs in trust for the Northern Cheyenne Tribe:

Principal Meridian

T. 8 S., R. 40 E.,
Sec. 23, SW¼NE¼, N½SE¼;
Sec. 24, NW¼SW¼;
Sec. 26, N½SW¼;
Sec. 27, N½SW¼.

The areas described aggregate 320 acres in Big Horn County.

2. The management of the above described surface and mineral estates will be in accordance with the Memorandum of Agreement between the Northern Cheyenne Tribe, the Bureau of Indian Affairs, and the Bureau of Land Management, dated July 16, 1993.

Dated: November 19, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93-29868 Filed 12-7-93; 8:45 am]

BILLING CODE 4310-DN-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 400

Refugee Resettlement Program: Refugee Cash Assistance and Refugee Medical Assistance

AGENCY: Administration for Children and Families (ACF), HHS, Office of Refugee Resettlement.

ACTION: Final rule.

SUMMARY: The Department anticipates that adjustments in the eligibility period for refugee cash assistance (RCA) and refugee medical assistance (RMA) will continue to be necessary in future fiscal years to accommodate changing appropriation levels and changing refugee flows. Therefore, the Department is amending current regulations to establish both a methodology by which the Office of Refugee Resettlement (ORR) will determine each year the duration of eligibility for RCA and RMA, based on available appropriated funds for the year, and a procedure by which a final notice will be published in the **Federal Register** in lieu of publishing a regulation each time a change in the RCA/RMA eligibility period is necessitated by the amount of funds appropriated.

A proposed rule was published in the **Federal Register** on July 22, 1993 (58 FR 39181). Some clarifications have been provided in this final regulation after consideration of the written comments received.

EFFECTIVE DATE: January 7, 1994.

ADDRESSES: Office of Refugee Resettlement, Administration for

Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade SW., 6th Floor, Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Toyo A. Biddle, (202) 401–9253.

SUPPLEMENTARY INFORMATION:

Background

Current regulations at 45 CFR 400.203(b) and 400.204(b) provide for Federal refugee funding, subject to the availability of funds (45 CFR 400.202), for the State-administered special programs of refugee cash assistance (RCA) and refugee medical assistance (RMA) as set forth in 45 CFR part 400 subparts E and G. RCA, which provides monthly cash assistance payments to refugees, and RMA, which provides payment of hospital and medical bills, were established to assist needy refugees who do not meet the categorical eligibility requirements for the programs of Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI) for the aged, blind, and disabled, and Medicaid.

Prior to 1982, RCA and RMA were available during an eligible refugee's first 36 months in the U.S. An interim final rule, published March 12, 1982 (47 FR 10841), reduced the period to 18 months, and a final rule, published August 24, 1988 (53 FR 32222), further reduced the eligibility period to 12 months. Due to limited funds appropriated for these programs in FY 1992, an emergency final rule was published on January 10, 1992 (57 FR 1114), further reducing the RCA/RMA eligibility period to 8 months in FY 1992. On September 17, 1992 (57 FR 42896), an emergency final rule was published maintaining the eligibility period at 8 months for FY 1993. Finally, due to the limited amount of appropriated funds available for the remainder of the fiscal year, an emergency final rule was published on March 1, 1993 (58 FR 11793), reducing the RCA/RMA eligibility period for the remainder of FY 1993 to 5 months. Subsequently, on March 31, 1993, based on the Department's intent to seek supplemental funding during FY 1993 to enable the RCA/RMA eligibility period to be maintained at 8 months for the remainder of FY 1993, the regulation establishing a 5-month RCA/RMA eligibility period was withdrawn (58 FR 16777). An emergency final rule was published simultaneously to reduce the RCA/RMA eligibility period from 8 months to 3 months, effective June 1, 1993, in the event that the Department was not successful in obtaining supplemental funding. Subsequently, a rule delaying the effective date of the 3-month rule to August 1, 1993, was published on May 25, 1993 (58 FR 29981), based on the availability of additional funds for the RCA/RMA program due to a lower level of FY 1993 funding needed for the matching grant program than was first estimated and the fact that more recent RCA/RMA data indicated a lower per capita cost than originally estimated. Finally the 3-month rule was withdrawn on July 30, 1993 (58 FR 40754), based on the Department's determination that sufficient funds were available to continue the 8-month RCA/RMA eligibility period for the remainder of FY 1993 due to the enactment of Public Law No. 103–50 on July 2, 1993, which allows refugee funds for FY 1992 to be used for costs of assistance and services in FY 1993.

On September 1, 1993, an emergency final rule was published (58 FR 46089) to maintain the RCA/RMA eligibility period at 8 months in FY 1994. This regulatory action was taken in anticipation that FY 1994 appropriations for the refugee program will not be sufficient to sustain an eligibility period greater than 8 months. In the absence of this emergency rule, the RCA/RMA eligibility period would have reverted to a 12-month period as of October 1, 1993.

Discussion of Changes

No substantive changes have been made in this final rule, as compared with the proposed rule published on July 22, 1993. Clarification is provided on various aspects of the methodology and process to be used in making determination of the time-eligibility period for RCA and RMA. These clarifications are provided in the Discussion of Comments section, and some clarifying changes have been made to the rule itself.

Description of the Regulation

This rule removes from 45 CFR part 400 all references to a specific duration of eligibility for RCA and RMA and establishes a methodology by which the Office of Refugee Resettlement will determine the duration of eligibility for RCA and RMA, based on available appropriated funds. The Director of ORR will make a determination of the eligibility period each year as soon as possible after funds are appropriated for the refugee program, and also at subsequent points during the fiscal year, only if necessary, based on updated information on refugee flows and State reports on receipt of assistance and expenditures. The eligibility period in effect at the close of FY 1993 will continue to remain in effect until the Director determines that the eligibility period needs to be changed based on the methodology described in this regulation to accommodate the level of funds appropriated by Congress. Currently, cash and medical assistance are provided under the line item for Transitional and Medical Services (TAMS), which also provides funds for State administrative costs, the unaccompanied minors program, and the voluntary agency matching grant program. In making a determination, the Director will first subtract from the amount available for TAMS under the appropriation, the anticipated costs of the unaccompanied minors program, the matching grant program, and any other program component that is designated by Congress in the TAMS line item in the future, other than the RCA/RMA program and State administration. If, in the future, the TAMS line item is replaced by another line item that includes the RCA/RMA program and State administration, the Director will subtract from the amount available for that line item the anticipated costs of other program components that are designated by Congress in the line item, other than the RCA/RMA program and State administration. The Director then will apply the methodology to determine the duration of RCA/RMA eligibility to be provided based on the balance of appropriated funds available. If the Director determines that the period of $ eligibility needs to be changed from the eligibility period in effect at the time, ORR will publish a notice in the **Federal Register**, announcing the new period of RCA/RMA eligibility and the effective date for implementing the new eligibility period. States will be given as much notice as available funds will allow without resulting in a further reduction in the eligibility period. At a minimum, States will be given 30 days' notice.

Methodology for Determining RCA/RMA Eligibility Period

The methodology described below applies only to the determination of the RCA/RMA eligibility period. The methodology will be applied to various RCA/RMA time-eligibility periods in order to determine the time-eligibility period which provides the most number of months within the funds appropriated for the fiscal year. The Federal government is prohibited from obligating more funds than are appropriated.

The method to be used to determine the RCA/RMA eligibility period will include the following steps:

1. The time-eligible population for the projected fiscal year will be estimated on the basis of the refugee admissions ceiling established by the President for that fiscal year and the anticipated arrival of other persons eligible for refugee assistance, to the extent that data on these persons are available. The anticipated pattern of refugee flow for the projected fiscal year will be estimated based on the best historical and current refugee flow information that will most accurately forecast the refugee flow for the fiscal year. These arrival figures then will be used to determine the time-eligible population for a given duration of RCA/RMA benefits.

2. The average annual number of RCA and RMA recipients will be determined by multiplying the estimated time-eligible population established in step 1 by the estimated RCA and RMA participation rates. The RMA participation rate will take into account both RCA recipients, who are also eligible for RMA, and RMA-only recipients. The appropriate participation rates for various RCA/RMA time-eligibility periods are derived from recipient data from quarterly performance reports submitted by States for the most recent 4 quarters for which reports are available.

3. The average annual per recipient cost for RCA and RMA will be estimated separately, based on estimated per recipient costs for the most recent fiscal year, using available data, and inflated for the projected fiscal year using projected increases in per capita AFDC cash assistance costs for RCA and per capita AFDC Medicaid costs for RMA.

4. The expected average annual number of RCA recipients will be multiplied by the expected RCA per recipient cost to derive estimated RCA costs. The expected average annual number of RMA recipients will be multiplied by the expected RMA per recipient cost to derive estimated RMA costs.

5. State administrative costs for the projected fiscal year for all States in the aggregate will be estimated based on total actual allowable expenditures for State administration for the most recent fiscal year. The variable portion of administrative costs will be adjusted for anticipated changes in program participation and inflated by the Consumer Price Index (CPI) for all items as estimated by the Office of Management and Budget (OMB). The fixed portion of administrative costs will be adjusted by the CPI inflator only.

6. The total estimated costs for the projected fiscal year will equal the combined estimated costs for RCA, RMA, and State administration as calculated in steps 1 through 5.

ORR will notify States of the duration of the eligibility period through a notice published in the **Federal Register** if the RCA/RMA eligibility period for the fiscal year must be changed from the RCA/RMA eligibility period in effect at that time.

The following example, using hypothetical data, illustrates how the methodology will work:

1. Suppose that the refugee admissions ceiling for FY 1994 is established at 1,000 and, based on available data, it is determined that an additional 200 persons eligible for refugee assistance are expected to arrive, resulting in a total expected arrival population of 1,200. Suppose that the same number, 1,200, arrived in the previous fiscal year (FY 1993). Based on an examination of the refugee flow from the previous year, suppose it is determined that the monthly flow in the projected fiscal year will be the same as in the previous fiscal year, with the monthly arrivals for both years as follows:

	Arrivals	FY 1994 8-month time-eligible population
MAR93	107	
APR93	87	
MAY93	87	
JUN93	92	
JUL93	93	
AUG93	110	
SEP93	158	
	734	
OCT93	65	799
NOV93	92	784
DEC93	124	821
JAN94	90	824
FEB94	95	827
MAR94	107	841
APR94	87	818
MAY94	87	747
JUN94	92	774
JUL94	93	775
AUG94	110	761
SEP94	158	829
Total	1,200	9,600

Average time-eligible: 800.

Assuming that the RCA/RMA time-eligibility period is 8 months, the time-eligible population in October would be the arrivals in October, plus refugees who arrived in the previous 7 months (March–September). The time-eligible population in October would be 799 refugees. The time-eligible population for each month in the fiscal year would be determined in the same manner as for October and then averaged across all months, for an average of 800 in this example.

2. Based on an examination of RCA and RMA participation rates in the most recent 4 quarters for which State performance reports are available, suppose it is estimated that for an 8-month eligibility period, 35% of the time-eligible population will receive RCA benefits and 50% will receive RMA benefits. (The RMA participation rate includes refugees receiving both RCA and RMA and refugees receiving RMA only.) The figure of 800 determined in Step 1 is then multiplied by the RCA participation rate of 35% for a total of 280 RCA recipients and by the RMA participation rate of 50% for a total of 400 RMA recipients. These figures reflect the average annual number of RCA and RMA recipients.

3. If, in the previous fiscal year, the average annual RCA cost per recipient was $1,000 and the average annual RMA cost per recipient was $1,500, we would expect the average RCA cost per recipient to be $1,020 for the projected year (assuming a 2% increase in per capita AFDC costs), while the average RMA cost per recipient would be expected to be $1,680 (assuming a 12% increase in per capita AFDC Medicaid costs).

4. Total RCA costs would equal the number of recipients (280) multiplied by the per recipient cost ($1,020), equaling $285,600. Total RMA costs would equal the number of recipients (400) multiplied by the per recipient cost ($1,680), equaling $672,000.

5. State administrative costs for all States in the aggregate would be projected from the most recent fiscal year, adjusted for inflation, assuming there were no changes in the number of RCA/RMA recipients which could be expected to affect the variable portion of administrative costs. Suppose that last year actual allowable administrative costs were $250,000. Also suppose that OMB's CPI rate is 4%. Therefore, we would expect administrative costs to equal $250,000 times 1.04, totalling $260,000.

6. Total costs would equal the sum of $285,600 for RCA, $672,000 for RMA, and $260,000 for administrative costs, equaling $1,217,600.

Suppose the appropriation level for TAMS is $1,955,000, the anticipated costs of the unaccompanied minors program are $290,000, and the costs of the matching grant program are expected to be $390,000. Therefore, appropriated funds available for RCA, RMA, and State administrative costs would equal $1,275,000, after the costs of the unaccompanied minors program and the matching grant program are

deducted from the amount available for TAMS under the appropriation. Suppose, using the methodology described above, the cost of a 9-month RCA/RMA eligibility period was estimated to be $1,290,000, thus exceeding the level of available appropriated funds for RCA, RMA, and State administrative costs. Based on these estimates, the Director would determine that an 8-month time-eligibility period would provide the most number of months of benefits without incurring a shortfall in funds for the fiscal year.

Consistent with the preceding actions, 45 CFR 400.2, 400.60(b), 400.100(b), and subject J are amended.

Discussion of Comments Received

Forty-six letters of comment were received in response to the notice of proposed rulemaking published in the Federal Register on July 22, 1993. The commenters included State and local governments, national and local voluntary agencies, refugee mutual assistance associations, advocacy organizations, and refugee service providers. These comments were taken into consideration in the development of this final rule.

Forty-five of the commenters expressed opposition to the proposed rule; one commenter commended ORR for trying to improve the process. Eighteen commenters recommended withdrawal or postponement of the rule to allow more time to consider the issues.

The comments are summarized below and are followed in each case by the Department's response.

General Comments

Comment: Nine commenters felt that ORR should play a strong leadership role in advocating for a reasonable period of eligibility for cash and medical assistance to refugees instead of simply establishing a process for making automatic adjustments to the eligibility period to accommodate budget constraints. One commenter expressed concern that this rule will send the message that there is no minimum period required to help refugees become self-sufficient in this country and that this message will diminish the Department's ability to advocate for an adequate period of support.

Response: This regulation in no way is intended to suggest that ORR will not advocate for a reasonable period of eligibility for refugee cash and medical assistance. We are committed to paying an active leadership role in ensuring that refugees who are not categorically eligible for other public assistance programs are provided an adequate period of support that allows sufficient time for these refugees to become employed and self-supporting. It is important to make the distinction, however, that the appropriate and crucial time to advocate for sufficient resources for the refugee program is during the annual appropriations process, before Congress makes decisions on appropriation levels for the coming fiscal year. ORR will continue to seek adequate resources for the refugee program in general and specifically to ensure that a stable RCA/RMA eligibility period is maintained. ORR's efforts during the annual appropriations process will not be diminished or affected in any way by this regulation. Once the appropriations process is completed, however, and Congress has made its decision regarding appropriations for the refugee program, then ORR's task changes from advocacy to managing the program as effectively as possible within the resource level provided by Congress. An essential part of this task is to determine as quickly and as accurately as possible what is the maximum period of RCA/RMA eligibility that the appropriated funds will bear, to determine whether a change in the eligibility period is necessary, and to communicate this determination to States and other participants in the refugee program with as much advance notice as possible. It is this task that this regulation addresses.

We do not agree that by removing references to a specific RCA/RMA time-eligibility period in the regulation, ORR will be sending a message that there is no minimum time required by most refugees. We will use the budget process each year to convey the message that a reasonable minimum duration of assistance needs to be maintained for refugees.

Comment: Several commenters expressed concern that use of the proposed methodology would result in a lessened interest in seeking alternative solutions to a reduced eligibility period, such as supplemental funding or a reprogramming of funds. Two commenters felt that an automatic adjustment process should not take the place of thoughtful planning and management. Two commenters were concerned that this regulation would institutionalize a preference for benefit reductions. One commenter felt that other changes such as a reduction in the Federal reimbursement rate to States, rather than a reduction in eligibility period, should be made to accommodate decreasing appropriations in order to avoid placing the burden on refugees. Another commenter suggested that ORR should consider the alternative of awarding funds for cash, medical, and administrative (CMA) costs to States on a formula grant basis, based on a 12-month eligible population. The commenter suggested that this approach would enable States to have the flexibility to utilize available funds in a manner most appropriate and cost-effective for each State. It would allow States to engage in innovative programming and would reward programs that successfully leverage mainstream resources and/or achieve the goal of early self-sufficiency.

One commenter recommended that ORR form a workgroup that includes State Coordinators, voluntary agencies, MAAs, and local governments to explore alternative methods for dealing with changes in funding.

Response: The process presented in this regulation is not meant to, and will not, replace thoughtful planning and management on the part of ORR. If the level of appropriated funds is not sufficient to maintain the eligibility period in effect at the time, ORR will explore possible alternatives before reducing the eligibility period. We wish to assure commenters that this regulation will not institutionalize a preference for benefit reductions.

Regarding the issue of changing the reimbursement rate, the law governing the refugee program would have to be amended to allow a change in the reimbursement rate to States for refugee cash and medical assistance. See 8 U.S.C. 1522(e)(1).

The idea of CMA formula grants to States in lieu of the current reimbursement arrangement is an idea that ORR preliminarily explored with a workgroup of States a few years ago. This concept, as well as other ideas, are worth exploring further. This regulation does not preclude continued consideration by ORR of these kinds of options. The idea of forming a workgroup to discuss alternative ways of handling changes in funding is one of many options that we may consider in the coming year.

Comment: Two commenters stressed the importance of tying refugee funding to the number of refugee admissions approved for the U.S. instead of tying the time-eligibility period to the appropriation level.

Response: We agree that appropriation levels should be related to the anticipated number of refugee admissions. The Department's budget request for FY 1994 proposed funding estimated to be sufficient to maintain an 8-month RCA/RMA eligibility period for

a projected 122,000 in refugee admissions.

Comment: One commenter considered the proposed regulation to constitute a major departure from Congressional intent and recommended as such that the proposal be considered during the reauthorizing process in 1995.

Response: This regulation does not represent a departure from Congressional intent. The procedure described in this regulation is simply a change in mechanics, only changing the notification procedure from a regulation to a **Federal Register** notice based on a regulation. The process to be used to determine the maximum eligibility period that appropriated funds can cover is similar to the process that ORR has previously used whether issuing an emergency final rule to announce a change in eligibility period or publishing a notice in the **Federal Register**. The only change is that the methodology that will be used is a more refined and, therefore, more accurate, version of the methodology that ORR has used in the past. In addition, this regulation makes public the methodology to be used. Heretofore, the methodology was not available to the public.

Comment: Two commenters felt that by allowing ORR to determine the duration of RCA/RMA, the decision making process would be taken away from Congress.

Response: The Congressional decision making process would in no way be affected by the methodology. Decisions on appropriation levels for the refugee program will continue to be made by Congress. ORR would simply continue to determine the eligibility period that the appropriated funds would be able to support.

Comment: Two commenters felt that the proposed regulation would provide ORR with the mechanism for phasing out the RCA/RMA program.

Response: This regulation does not give ORR the means to phase out the RCA/RMA program. The procedure established by this regulation can only be used when ORR changes the duration of RCA/RMA to accommodate the appropriation level set by Congress. If ORR decides to reduce RCA/RMA coverage as a matter of policy, rather than as an accommodation to available appropriated funds, ORR would be required to publish a notice of proposed rulemaking for public comment, followed by publication of a final rule, in accordance with the requirements of the Administrative Procedure Act (APA). Similarly, in order to phase out or terminate the RCA/RMA program, ORR would be required to publish a notice of proposed rulemaking for public comment, in accordance with APA requirements, before issuing a final rule.

Comment: Four commenters expressed concern that this regulation allows ORR to further shift the burden of cash and medical assistance from the Federal government to States, local governments, and voluntary agencies.

Response: This regulation does not give ORR authority to shift costs to the State and local level. Such shifts are a function of the level of Congressional appropriations.

Comment: Nine commenters expressed concern about losing the opportunity for public comment whenever the eligibility period is decreased. The commenters felt that it is important to retain the public comment period to assure that changes in the program will not occur routinely. Sixteen commenters expressed the view that the proposed methodology would circumvent the notice and public comment requirements of the Administrative Procedure Act (APA). Two commenters argued that the eligibility period is a substantive rule which must be promulgated in accordance with APA requirements.

Response: Whenever appropriated funds have been insufficient to support the RCA/RMA eligibility period in effect at the time, the Department has published an emergency final rule, without opportunity for public comment, to put into effect the new eligibility period as quickly as possible in order to avoid a further reduction in duration. The use of this procedure under these circumstances is in compliance with APA requirements. See 5 U.S.C. 553(b)(B). An opportunity for public comment was not available, therefore, when the RCA/RMA eligibility period was either reduced or maintained at the same level by final regulation on January 10, 1992, September 17, 1992, March 1, 1993, March 31, 1993, and September 1, 1993. The recent notice of proposed rulemaking published on July 22, 1993, however, did provide an opportunity for public comment on the proposed methodology. This opportunity is not provided under the emergency final rule process. Thus the public gained an opportunity for public comment rather than losing it. We believe that the proposed regulation is a more desirable method to use because it allows the public to comment on the methodology to be used in determining eligibility periods.

With respect to whether the eligibility period is a substantive rule, while the Administrative Procedure Act requires that an agency publish substantive rules for notice and comment, an agency is not required to publish "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice" for notice and comment. See 5 U.S.C. 553(b)(A). The methodology contained in the regulation that the Department published for public comment is a substantive rule which will determine the eligibility period for RCA/RMA based on the level of funds appropriated by Congress. Because the Department has agreed to be bound by this methodology, the actual determination of the eligibility period pursuant to that methodology is an interpretative rule, which need not be published for notice and comment.

Comment: Thirteen commenters recommended withdrawal of the notice of proposed rulemaking or postponement of a final rule until the findings of the General Accounting Office (GAO) study regarding the validity of ORR's methodology for determining the RCA/RMA eligibility period are published and reviewed. Seven commenters felt that it is premature to issue a final rule before the GAO report is made final and before efforts initiated by the Department and ORR to work with States and other key parties regarding a forecasting model are completed.

Response: We have not yet received the GAO report. When we do receive the report, we will take into consideration any recommendations that GAO makes for improving the methodology. We have no reason to believe, however, based on a preliminary briefing by GAO of its findings several months ago, that this report will necessitate any major revisions of the proposed methodology.

Comment: Twenty commenters expressed concern regarding the possibility of frequent changes in the eligibility period. Six commenters felt that the potential for frequent changes in the eligibility period would affect the ability of States and voluntary agencies to assist refugees to become self-sufficient. Ten commenters felt that fluctuations in eligibility would place refugees at risk and would cause confusion and a bureaucratic nightmare for States and service providers. Two commenters suggested that fluctuations in the eligibility period could discourage small and medium States from continued participation in the refugee program.

Four commenters recommended that changes in the RCA/RMA eligibility period necessitated by the level of appropriated funds should be limited to no more than one change per year, at the

beginning of the fiscal year. One commenter questioned the need for redeterminations during the year. One commenter recommended that the language authorizing the Director to make determinations at subsequent points during the fiscal year be deleted.

Response: We also wish to avoid frequent changes in the RCA/RMA eligibility period. We agree with the commenters that constant fluctuations in the eligibility period will result in an untenable situation for all concerned. We are interested in maintaining a stable eligibility period. When a change is necessary, we anticipate making only one determination at or near the beginning of the fiscal year as soon as the appropriation level is known. If the determination indicates sufficient funds to maintain the current eligibility period, we will make no change. If the determination indicates insufficient funds, but alternatives are found to cover the additional cost, no change will be made. Once the Director determines, however, that a change must be made, the appropriate notification will be made quickly. We do not expect to have to make other determinations and changes during the fiscal year unless they are clearly necessary to enable States to avoid shortfalls. As an example, an emergency resettlement of a substantial number of unexpected refugees, which could not be predicted in advance, might occur which would necessitate a change in eligibility period in order to avoid a shortfall, if additional funding is not available.

Comment: Six commenters questioned how ORR would deal with unexpected arrivals during the year. One commenter pointed out that a redetermination of the eligibility period would not provide the necessary resources to accommodate the extra arrivals. Two commenters suggested that ORR consider establishing a domestic emergency fund, similar to the Department of State's emergency fund, as a way to accommodate emergency arrivals.

Response: ORR will explore possible alternatives before reducing the eligibility period as a result of additional arrivals. The Administration always has the discretion to seek additional funds or to pursue other solutions in response to an emergency situation. The concept of a domestic emergency fund is certainly an idea worth considering, but would require new legislation to authorize it.

Comment: Five commenters noted that the methodology does not include or mention reimbursement of the States' share of the costs for refugees in the categorical public assistance programs such as Aid to Families with Dependent Children (AFDC). The commenters expressed concern that the absence of any reference to the categorical programs in the proposed regulation implied that ORR intends to officially eliminate the possibility of reimbursement for these programs.

Response: The lack of reference in the regulation to reimbursement for categorical program costs is not meant to imply that ORR intends to eliminate the possibility of reimbursement for these programs. We did not include these program costs in the methodology because we believe it is highly unlikely that the refugee program will enjoy a funding level in the foreseeable future that will enable ORR to reimburse States for their share of categorical public assistance costs for refugees. ORR has not had sufficient funds to reimburse States for any portion of their categorical program costs since FY 1990.

Comments on the Methodology

Comment: Eight commenters questioned the accuracy of the proposed methodology. Three of the commenters noted that a similar methodology was used to prepare materials for submission to the Federal District Court in Seattle in the case of *Nguyen* versus *Shalala*, No. C92–1867WD, in December 1992 and that these calculations proved incorrect, indicating that the methodology used was not reliable. Five of the commenters questioned whether the proposed methodology is the same as the methodology used in FY 1990 which failed to predict a shortfall, in FY 1992 when a surplus resulted, or in FY 1993 when various time-eligibility periods were established and withdrawn. Five commenters felt that it was not clear whether the proposed methodology is a new methodology whose accuracy has been tested on past data or whether the methodology is the same one that ORR has used in past years. One commenter suggested that an example that uses actual figures would be more credible than the hypothetical example used in the NPRM. One commenter indicated that if the methodology is the same one used in past years, the commenter applauds ORR for making it public.

Response: The methodology is a more refined version of the methodology used in the past. The methodology includes Cuban/Haitian entrants in the projected time-eligible population; the old methodology did not include Cuban/Haitian entrants. In addition, we are now able to monitor the number of RMA-only cases as a result of the availability of more data on these cases and are including these cases in a determination of the RMA participation rate. The methodology used in past years was not able to factor in a precise count of RMA-only cases.

Regarding the methodology used throughout FY 1993 and in the *Nguyen* versus *Shalala* case, the methodology did not result in incorrect calculations. The change in calculations resulted from the continued use of more current State expenditure data as they became available. In addition, the agency's actions to withdraw the 5-month eligibility period rule which was to go into effect on April 1, 1993, and to maintain the 8-month eligibility period for the duration of FY 1993 resulted from the Secretary's determination to seek alternative funding, an action that ultimately was successful as recounted in detail in the Background section of this preamble.

We have tested the model on FY 1992, using data which would have been available in October, 1991. We assumed that the FY 1992 RCA/RMA program was as it was implemented: part of the year limited to 12 months and the balance limited to 8 months. The objective of the test was to determine whether the costs estimated by the model are close to the actual costs of States. The model estimates costs at $190.4 million for RCA/RMA and State administration in FY 1992, as compared to $192.7 million in actual experienced FY 1992 costs. This represents an error of only 1.2%. We, therefore, have a high degree of confidence in the model.

We are committed to a validation process over time. To accomplish this goal, we plan to determine the accuracy of our methods against actual data each year.

Comment: Three commenters felt that a clearer time frame should be established for determining the eligibility period each year than the phrase "* * * as soon as possible after funds are appropriated * * *" suggests. The commenters felt that the vagueness of the wording might result in a less than timely determination. One commenter suggested that since ORR will have all the figures needed for the methodology with the exception of the appropriation level, ORR ought to be able to make a determination within 24 hours after the appropriation level is known.

Response: We are committed to making a determination of the eligibility period within the shortest time possible. However, it is not possible to state a precise time frame for making a determination. If an initial determination indicates the need to reduce the eligibility period, we reserve the right to take the time to explore

alternative solutions to try to maintain the eligibility period in effect at the time before making a final determination.

Comment: Twenty-three commenters felt that a minimum of 30 days' notice does not allow sufficient time to make the necessary policy, procedural, and data changes that are required at the State and local level to accommodate a change in the eligibility period. One commenter pointed out that time is needed to issue translated notices to refugees and to make determinations of eligibility for other benefit programs for refugees terminating RCA/RMA. Two commenters expressed concern that sudden termination of benefits, without adequate advance notice, does not allow refugees enough time to find an alternative means of income. Comments varied on the amount of notice needed: 4 commenters felt that States would need a minimum of 60 days lead time; 7 commenters indicated that 90 days are needed to implement a time-eligibility change; and 2 commenters felt that up to 120 or 180 days would be necessary.

One commenter warned that 30 days' notice might result in the State having to provide an unreimbursed month of RCA/RMA to refugees. Another commenter stated that implementation within such a short period of time will result in a financial burden on the States. One commenter wondered if ORR would reimburse these costs.

Response: We understand the need to provide adequate advance notice in order to provide sufficient time to States to implement the change and to recipients to find an alternative means of living. We are committed to providing as much notice as available funds will allow as long as the longer period of notice will not require the eligibility period to be further reduced. For example, if a determination is made that the level of appropriated funds is sufficient for only a 7-month eligibility period and thus a notice to States is necessary, if sufficient funds are available to give 60 days' notice without necessitating a further reduction in the eligibility period to 6 months, ORR will give 60 days' notice. If available funds are not sufficient to give a full 60 days' notice, ORR will consider other alternatives such as a phased implementation similar to the procedure used in early FY 1992, in which a 30-day effective date was used for new applicants and a 60-day effective date was used for refugees already receiving RCA/RMA.

In deciding the amount of notice to be given, however, we reserve the right to take the time needed to explore possible alternatives to reducing the eligibility period.

With regard to ORR reimbursement of costs associated with implementation of a time-eligibility change, we will reimburse States for allowable administrative costs incurred as a result of implementation. However, we will not reimburse for additional RCA/RMA costs resulting from late implementation beyond the effective date.

Comment: Seventeen commenters questioned the rationale for giving funding priority to the unaccompanied minors program, the matching grant program, and any other program component included in the future in the TAMS line item over the RCA/RMA program. Two commenters found it troubling that funding for the matching grant program appears to be held harmless. Two commenters noted that the methodology does not indicate how the funding level for the unaccompanied minors program and matching grant program would be determined. One commenter questioned how ORR will determine the appropriate level of funding for the matching grant program, absent Congressional direction. Five commenters felt that giving higher priority to the unaccompanied minors and matching grant programs will result in inequitable treatment of refugees on RCA and RMA. One commenter stressed the need to share the effects of reduced funding equally across all refugees.

Six commenters questioned ORR's intent in placing a priority on any other program component that is included in the future in the TAMS line item over the RCA/RMA program. Two commenters stated that ORR needs to clarify what is meant by "any other program" and needs to explain why an unidentified program would warrant funding priority over the RCA/RMA program. One commenter felt that ORR's efforts to privatize the program could be revisited through such vague wording. Another commenter found the wording particularly upsetting in light of the animosity recently engendered by the attempted implementation of the private resettlement program (PRP).

Response: We plan to continue to give priority to the unaccompanied minors program. Funding will be based on estimates of individuals who leave the program because they have reached the age of majority and on new arrivals. Unaccompanied minors are a vulnerable population which requires continued support. With respect to the matching grant program, unless we are otherwise instructed by Congress, we expect, under the President's budget, to keep the program at the FY 1993 program level, or at a lower level if participant numbers go down. If, however, the level of appropriated funds requires a reduction in the RCA/RMA eligibility period, we will revisit the issue of the funding level for all components in the TAMS line item. It is important, however, to note that if funding for the matching grant program were reduced for reasons other than declining numbers of participants, there would be a disproportionate increase in costs in the RCA/RMA program. This would result because the Federal cost of providing RCA to refugees who otherwise would have been in the matching grant program would be higher than the Federal cost of their participation in the matching grant program. The matching grant program is financed through a combination of Federal funding and private funding, while the RCA/RMA program is financed wholly by the Federal government.

Regarding the question of equity, refugees in the matching grant program would be eligible to receive no more than the same period of assistance as refugees receiving RCA: Assistance through the fourth month would be provided under the matching grant program and, for refugees who are not self-sufficient after the first 4 months, a second 4 months of assistance would be available to former matching grant clients under the RCA program, totaling 8 months, the same period of eligibility available to RCA clients. If the RCA eligibility period were to be reduced to 7 months, matching grant clients would be eligible to be assisted under the matching grant program through their fourth month and then for 3 months under RCA. Therefore, we do not believe equity is at issue.

The phrase, "any other program component," refers to other programs that Congress might decide to include in the same line item as the RCA/RMA program in the future. Funding priority would not necessarily be given to these unknown program components unless Congress required that priority be given. We did not have any particular programs in mind; we simply included this language because we cannot predict future Congressional action. This language was not included as a mechanism for revisiting the PRP program. As the result of the recent court case, *Nguyen* v. *Shalala* in the United States District Court, Western District of Washington, clearly indicates, any future effort to privatize the program or to make any other substantive program change would require publication of a notice of proposed rulemaking with a public comment period.

Comment: Seventeen commenters expressed concern about the methodology for estimating State administrative costs. Eight commenters felt that the methodology would restructure the way State administrative costs are reimbursed. Thirteen of the commenters felt that the linking of State administrative costs to increases and decreases in RCA/RMA participation does not take into account the need to keep core administrative services associated with the overall management of State refugee programs at a stable level. Five commenters felt that this link would punish State resettlement programs that have low public assistance utilization by reducing core administrative costs. One commenter speculated that the methodology was an attempt to capitate State administrative costs.

Response: We wish to clarify that the methodology for estimating State administrative costs is not designed to develop estimates of the administrative costs of individual States and will not be used to determine the level of reimbursements to States. ORR provides 100% reimbursement to States for actual allowable expenditures for State administration. This regulation will not change the method of reimbursement. The methodology is designed to develop a national estimate of State administrative costs in the aggregate solely for the purpose of factoring these costs into a determination of the RCA/RMA eligibility period.

With respect to using changes in program participation as an estimating factor, we wish to emphasize that changes in program participation would be taken into account in projecting aggregate estimates of State administrative costs only with respect to the variable portion of administrative costs. We recognize that States have certain fixed administrative costs associated with the overall management of the refugee program which would remain constant regardless of changes in program participation.

Comment: One commenter asked for clarification on the period of time from which quarterly performance reports from States would be used to determine RCA/RMA participation rates.

Response: We have clarified in the rule that we would derive participation rates from quarterly performance reports for the most recent 4 quarters for which reports are available.

Comment: Two commenters wondered whether ORR took into account that shorter time-eligibility periods will result in higher participation rates.

Response: Yes, the formula is adjusted for higher participation rates during shorter eligibility periods and lower participation rates during longer eligibility periods.

Comment: Three commenters pointed out that another factor affecting participation rates is the demographic characteristics of different refugee populations and wondered how the formula will deal with this factor. One commenter questioned how the formula will deal with sudden shifts in arrival demographics. Another commenter felt that participation rates are also affected by the destination of arrivals and by variations in local destination economies.

Response: We believe the year-to-year variations in demographic factors are not sufficiently large to make a significant difference that will affect the estimate. If a sudden shift occurs of significant magnitude, we will make a redetermination based on the best available information. Variables such as the geographic placement of arrivals and local economies are not factored into the formula; we believe these kinds of variables balance out in national aggregates.

Comment: Three commenters asked whether the methodology will be used to adjust the time-eligibility period upward as well as downward. One commenter wondered whether a periodic review will be used to revise the time-eligibility period upward if participation rates, cost, and other factors indicate a possible surplus.

Response: Yes, if the appropriation level allows an increase in the RCA/RMA eligibility period, we would adjust the eligibility period upward.

Comment: One commenter wondered whether the formula will deal with shifts in arrivals between States with differing cash and medical costs.

Response: The formula assumes that the population distribution does not contain radical shifts from low benefit States to high benefit States. We expect the arrival distribution to continue to be influenced primarily by family reunifications.

Comment: One commenter noted that the methodology does not provide a timely adjustment for refugees designated for one State but settling in another.

Response: The commenter is correct; the methodology does not take this issue into account. We do not believe this is a significant factor since the methodology is not meant to note changes in individual States, but is intended to develop national estimates and is not intended to be used to determine the distribution of funds to individual States.

Comment: Two commenters questioned how the formula will be adjusted to account for matching grant activities. One commenter wondered how changes in the use of AFDC and Medicaid will be accounted for in the formula.

Response: Matching grant participants are factored out of the RCA participation rate but included in the RMA participation rate. However, their later possible entry into the RCA program after their fourth month in the U.S. is reflected in the RCA participation rate. If major shifts in the use of AFDC and Medicaid occur in which significant numbers of refugees shift from AFDC/Medicaid to RCA/RMA or from RCA/RMA to AFDC/Medicaid, these shifts will be reflected in the RCA and RMA participation rates and will be taken into account in the next year's RCA/RMA projected estimates.

Comment: One commenter indicated that the methodology does not appear to include the factors that States discussed with ORR.

Response: The methodology has included the factors discussed with the States. Cuban/Haitian entrant numbers have been added to the formula and matching grant participants have been accounted for as described above. A third factor that was discussed was whether to factor out RCA costs for refugees' first month in the U.S. on the assumption that most refugees do not access RCA during their first month since they are receiving assistance through the reception and placement (R&P) program funded by the State Department. To validate this assumption, we asked States to provide us with supporting data. In the absence of these data, we will continue to include the first month in our RCA estimates. The last factor discussed with States was the possibility of developing a refugee-specific medical care inflation index. Information, however, is not currently available to develop such an index since there is only partial reporting in title XIX of the Social Security Act on refugee Medicaid utilization.

Comment: One commenter wondered whether the lag time between the end of one fiscal year and ORR receipt of State reports on total fiscal year costs affects estimates of current-year costs.

Response: The lag time has the potential for making the estimate less accurate. It is, however, the best information available.

Comment: One commenter wondered how the formula for determining the

RCA/RMA eligibility period is linked to the allocation of funds among States.

Response: There is no link. The methodology is not used for the purpose of allocating funds to the States.

Comment: Three commenters noted that State quarterly expenditure reports are subject to considerable variation since States are allowed to adjust expenditure reports for one year following the end of the fiscal year in which expenditures are incurred. This raises a question about the reports' reliability.

Response: We have not experienced a problem with substantial revisions to earlier State quarterly expenditure reports. Only a few States have submitted revised expenditure reports for earlier quarters. Most States have not had to revise earlier reports; thus the reports' reliability is not in question. However, expenditures reported in State quarterly reports vary considerably from quarter to quarter. For this reason, we base our estimates of projected RCA and RMA costs on the previous fiscal year as a whole instead of looking at individual quarters.

Regulatory Procedures

Executive Order 12866

Executive order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. An assessment of the costs and benefits of available regulatory alternatives (including not regulating) demonstrated that the approach taken in the regulation is the most cost-effective and least burdensome while still achieving the regulatory objectives.

This rule will establish a more efficient and timely procedure for notifying States whenever changes in the eligibility period for refugee cash assistance (RCA) and refugee medical assistance (RMA) are necessary to contain refugee cash and medical assistance costs within the operating fiscal year appropriation level.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal Government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses. The primary impact of these rules is on State governments and individuals. Therefore, we certify that these rules will not have a significant impact on a substantial number of small entities because they affect benefits to individuals and payments to States. Thus, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This rule does not contain collection-of-information requirements.

Statutory Authority

Section 412(a)(9) of the Immigration and Nationality Act, 8 U.S.C. 1522(a)(9), authorizes the Secretary of HHS to issue regulations needed to carry out the program.

(Catalogue of Federal Domestic Programs: 93.566, Refugee and Entrant Assistance—State-Administered Programs)

List of Subjects in 45 CFR Part 400

Grant programs—Social programs, Health care, Public assistance programs, Refugees, Reporting and recordkeeping requirements.

Dated: October 13, 1993.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Approved: November 28, 1993.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For reasons set forth in the preamble, 45 CFR part 400 is amended as follows:

PART 400—REFUGEE RESETTLEMENT PROGRAM

1. The authority citation for part 400 continues to read as follows:

Authority: Section 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9)).

§ 400.2 [Amended]

2. Section 400.2 is amended by amending the definition of "Refugee cash assistance" by removing the words "and who have resided in the United States for less than a 12-month period (except during Federal FY 1994, less than an 8-month period) from their initial entry into the country" after the word "SSI", by amending the definition of "Refugee medical assistance" by removing the words "and who have resided in the United States for less than a 12-month period (except during Federal FY 1994, less than an 8-month period) from their initial entry into the country" after the words "Medicaid program", and by amending the definition of "Time-eligibility" by removing the (a) after §§ 400.203 and 400.204.

§ 400.60 [Amended]

3. Section 400.60(b) is amended by removing the words "the 12-month period (except during Federal FY 1994, 8-month period) beginning with the first month the refugee entered the United States" after the word "during" and adding in their place the words "a period to be determined by the Director in accordance with § 400.211".

§ 400.100 [Amended]

4. Section 400.100(b) is amended by removing the words "the 12-month period (except during Federal FY 1994, 8-month period) beginning with the first month the refugee entered the United States" after the word "during" and adding in their place the words "a period of time to be determined by the Director in accordance with § 400.211".

§ 400.203 [Amended]

5. Section 400.203(b) is amended by removing the words "the 12-month period (except during Federal FY 1994, 8-month period) beginning with the first month the refugee entered the United States" after the word "during" and adding in their place the words "a period of time to be determined by the Director in accordance with § 400.211".

§ 400.204 [Amended]

6. Section 400.204(b) is amended by removing the words "the 12-month period (except during Federal FY 1994, 8-month period) beginning with the first month the refugee entered the United States" after the word "during" and adding in their place the words "a period of time to be determined by the Director in accordance with § 400.211".

§ 400.209 [Amended]

7. Section 400.209(b) is amended by removing the words "12 months (except during Federal FY 1994, 8 months)" after the word "than" and adding in their place the words "a period of time to be determined by the Director in accordance with § 400.211".

8. Subpart J is amended by adding a new § 400.211, that reads as follows:

§ 400.211 Methodology to be used to determine time-eligibility of refugees.

(a) The time-eligibility period for refugee cash assistance and refugee medical assistance will be determined by the Director each year, based on appropriated funds available for the fiscal year. The Director will make a determination of the eligibility period each year as soon as possible after funds are appropriated for the refugee program, and also at subsequent points during the fiscal year, only if necessary, based on updated information on refugee flows and State reports on receipt of assistance and expenditures. The method to be used to determine the RCA/RMA eligibility period will include the following steps and will be applied to various RCA/RMA time-eligibility periods in order to determine

the time-eligibility period which will provide the most number of months without incurring a shortfall in funds for the fiscal year.

(1) The time-eligibility population for the projected fiscal year will be estimated on the basis of the refugee admissions ceiling established by the President for that fiscal year and the anticipated arrival of other persons eligible for refugee assistance, to the extent that data on these persons are available. The anticipated pattern of refugee flow for the projected fiscal year will be estimated based on the best available historical and current refugee flow information that will most accurately forecast the refugee flow for the projected fiscal year. These arrival figures will then be used to determine the time-eligible population for a given duration of RCA/RMA benefits.

(2) The average annual member of RCA and RMA recipients will be determined by multiplying the estimated time-eligible population established in paragraph (a)(1) of this section by the estimated RCA and RMA participation rates. The RMA participation rate will take into account both RCA recipients, who are also eligible for RMA, and RMA-only recipients. Recipient data from quarterly performance reports submitted by States for the most recent 4 quarters for which reports are available will be used to determine the appropriate participation rates for various RCA/RMA time-eligibility periods.

(3) The average annual per recipient cost for RCA and RMA will be estimated separately, based on estimated per recipient costs for the most recent fiscal year, using available data, and inflated for the projected fiscal year using projected increases in per capita AFDC cash assistance costs for RCA and per capita AFDC Medicaid costs for RMA.

(4) The expected average number of RCA recipients will be multiplied by the expected RCA per recipient cost to derive estimated RCA costs. The expected average annual number of RMA recipients will be multiplied by the expected RMA per recipient cost to derive estimated RMA costs.

(5) State administrative costs for the projected fiscal year for all States in the aggregate will be estimated based on total actual allowable expenditures for State administration for the most recent fiscal year. The variable portion of administrative costs will be adjusted for changes in program participation and inflated by the Consumer Price Index (CPI) for all items as estimated by the Office of Management and Budget (OMB). The fixed portion of administrative costs will be adjusted by the CPI inflator only.

(6) The total estimated costs for the projected fiscal year will equal the combined estimated costs for RCA, RMA, and State administration as calculated in paragraphs (a)(1) through (5) of this section.

(b) If, as the Director determines, the period of eligibility needs to be changed from the eligibility period in effect at the time, the Director will publish a final notice in the **Federal Register**, announcing the new period of eligibility for refugee cash assistance and refugee medical assistance and the effective date for impleting the new eligibility period. States will be given as much notice as available funds will allow without resulting in a further reduction in the eligibility period. At a minimum, States will be given 30 days' notice.

[FR Doc. 93–29907 Filed 12–7–93; 8:45 am]
BILLING CODE 4184–01–M

Proposed Rules

Federal Register
Vol. 58, No. 234
Wednesday, December 8, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 710

RIN 1992-AA15

Office of Intelligence and National Security; Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material

AGENCY: Office of Intelligence and National Security, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) proposes to amend its regulations regarding the criteria and process used to review determinations of eligibility for access to classified matter or special nuclear material. The purpose of the amendments is to clarify the criteria used to determine access authorization eligibility and implement the Department's decision to reassign personnel security Hearing Officer and Review functions, formerly performed by contractors, to the DOE's Office of Hearings and Appeals.

DATES: Comments may be submitted by February 7, 1994.

ADDRESSES: Ten copies of comments should be sent to: Marcia B. Carlson, Chief, Docket and Publications Division, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

A. Barry Dalinsky, Policy, Standards and Analysis Division, Office of Safeguards and Security, Office of Security Affairs, U.S. Department of Energy, Washington, DC 20585, (301) 903-5010.

Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2094.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The DOE has established procedures that govern the resolution of questions concerning the eligibility of individuals who are employed by or applicants for employment with DOE contractors, agents, and access permittees of the DOE; individuals who are DOE employees or applicants for DOE employment; and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. (This access authorization is commonly referred to as a security clearance.) These procedures are codified in subpart A of 10 CFR part 710, which is being revised in today's proposed rule. Under these procedures, when a preliminary determination is made by the local Manager of a DOE Operations Office that an individual's security clearance should be revoked or should not be granted in the first instance, the individual may request a hearing to present facts and arguments why he or she should receive a security clearance. If the Hearing Officer recommends a decision adverse to the individual, he or she may request further review of the record by Personnel Security Review Examiners before the Director of DOE's Office of Security Affairs (SA) makes the final determination regarding the individual's access to classified matter or special nuclear material.

For a number of years, the DOE has contracted for the services of Hearing Officers and Personnel Security Review Examiners to implement the current regulations. The DOE has decided to use Federal employees to perform those functions. The functions have been assigned to the DOE's Office of Hearings and Appeals (OHA), which is a DOE Headquarters office with a staff of professional Hearing Officers experienced in the conduct of adjudicative proceedings. Concurrent with this change, DOE is making other substantive changes to the regulations as described below.

II. Summary of Proposed Regulations

As noted above, the proposed regulations would utilize Hearing Officers from DOE's Office of Hearings and Appeals in the administrative review process set forth in this subpart. The regulations proposed today also would replace the review conducted by Personnel Security Review Examiners. Under the amended procedures, a party who wishes to contest the initial opinion of the Hearing Officer can request review by the Director, OHA. The Director, OHA, will review the record in the matter, seek any additional information necessary, and issue an opinion. The OHA Director's opinion and the administrative record in the case will be transmitted to the Director, SA, who will make the final determination regarding the individual's access authorization to classified matter or special nuclear material.

There would be nomenclature changes to conform the regulations to the current DOE organization, and the applicable procedures have also been streamlined. Under the previous regulations, only the Director, SA, had the authority to make the final determination in those cases where derogatory information is received which raises a question concerning the individual's eligibility for DOE access authorization. These proposed regulations would delegate the authority to make the final determination on eligibility for DOE access authorization to the local Managers of its Operations Offices in those cases where an individual whose request for a security clearance is being processed under this subpart does not request a hearing. In all other cases, the Director, SA, will continue to make the final determination regarding eligibility for DOE access authorization.

The notice being published today also establishes new procedures for processing cases in which the individual: has been convicted of a crime punishable by imprisonment for six (6) months or longer [§ 710.4(b)]; has not resided in the United States (including its territories and possessions) for a period of time appropriate to the investigative requirements for the access authorization required by the individual [§ 710.4(c)]; claims dual citizenship [§ 710.4(d)]; or fails to cooperate in the investigative or administrative review process [§ 710.4(e) and § 710.6]. The criteria under § 710.11, renumbered in the proposed regulations as § 710.8, are also modified under paragraphs (f), (j), (k), and (l).

When DOE issues a final rule, there will be a provision making clear which ongoing cases already in process will continue to be subject to the old

regulations. DOE may provide that: (1) The old regulations apply to cases in which a notification letter was issued prior to the effective date of the new rule; and (2) the new regulations will apply to cases in which a notification letter is issued on or after the effective date of that rule. Similarly, DOE may specify whether the old or new review provisions will apply to ongoing cases, depending on whether a Hearing Officer recommendation was issued before or after the effective date of the new rule. DOE invites comment on this proposed choice.

III. Section by Section Analysis of Changes

Section 710.1 Purpose—

No substantive changes would be made to this section.

Section 710.2 Scope—

No substantive changes would be made to this section.

Section 710.3 Reference—

No substantive changes would be made to this section.

Section 710.4 Policy—

The phrase energy research and development programs would be removed; this change would have no substantive impact. Paragraph (b) of the current regulation states that DOE may withhold processing a request for access authorization where an individual has been convicted of a felony and is currently serving probation or parole. The proposed regulations would clarify this policy by providing in paragraph (b) that DOE may not process a request where an individual has been convicted of a crime punishable by imprisonment of six months or more, or is currently serving pre-prosecution probation or deferred sentencing. Three new paragraphs would be added in the proposed regulations to further clarify the policy for suspending processing of requests. They would specify that the DOE will suspend processing an application for access authorization in the following instances: until the individual has resided in the United States for a sufficient amount of time for the investigative requirements of the access authorization process; until such time as the individual renounces dual citizenship or otherwise resolves questions regarding national allegiance; and, if the individual fails to cooperate with the investigation, until such time as the individual's cooperation is obtained. The language in this section would be changed to more closely reflect the current policy of the Department.

Section 710.5 Definitions—

The definition of access authorization would be unchanged.

A definition of Local Director of Security would be added to be consistent with the current DOE organization.

A definition of DOE Counsel would be added. This person is defined in the current regulations as Hearing Counsel.

The definition of the Hearing Officer would be revised from a person, generally a contractor, appointed by the Manager of a DOE Operations Office to a DOE employee appointed by the Director of DOE's Office of Hearings and Appeals.

An Operations Office Manager or Manager would be defined to be consistent with the current DOE organizational structure. The current regulations define this person as the Manager of Operations.

Special nuclear material would be defined to include any quantity of plutonium, uranium-233, or uranium enriched in the isotope 235. The current regulations provide that special nuclear material must exceed 1,000 grams of uranium-233 or uranium enriched in the isotope 235, or 400 grams of plutonium.

The definition of DOE Personnel Security Review Examiner would be removed because that function in the administrative review process will now be performed by the Director, Office of Hearings and Appeals.

Section 710.6 Cooperation of the Individual—

This new section would make clear that an individual has a responsibility to cooperate in any background investigation associated with the approval of access authorization. It would put the individual on notice that if he or she chooses not to cooperate, the DOE may, for administrative efficiency, suspend further processing on the request until the individual cooperates.

Section 710.7 Application of the Criteria—

This section is currently numbered § 710.10. Paragraph (c) would clarify the process by which individual cases are resolved and remains basically the same, except that the regulations would provide that the local Director of Security, instead of the Operations Office Manager, may authorize actions to attempt to resolve any derogatory information and grant access authorization. If those actions are unsuccessful, the local Director of Security would send the matter to the Operations Office Manager, who, if he or she agrees, would transmit the matter to the Office of Safeguards and Security at DOE headquarters in Washington, DC. The Safeguards and Security Director would either authorize the granting of access authorization, approve the matter for administrative review under this Subpart, or take such other action as he deems appropriate.

Paragraph (d) would be changed to conform to the language in the standardized adjudication guidelines for security clearances to be issued under the National Industrial Security Program (NISP) described in Executive Order 12829, 58 FR 3479 (January 6, 1992). It would clarify the matters the DOE should consider in resolving questions concerning an individual's eligibility for access authorization. Among the considerations identified in the proposed regulation are: the nature and seriousness of the conduct, the circumstances surrounding the conduct, the frequency and recency of the conduct, the absence or presence of rehabilitation or reformation, the age and maturity of the individual at the time of the conduct, the motivation for the conduct, and the potential for pressure or coercion.

Section 710.8 Criteria—

This section is currently numbered § 710.11. It lists the types of derogatory information which may create a question as to the individual's eligibility for access authorization. The words *without adequate evidence of rehabilitation or reformation* would be deleted from where they appeared in paragraphs (j), (k), & (l) in the current regulations because rehabilitation and reformation are now included as generic considerations in § 710.7(d). Paragraphs (h), (j) and (l) would be changed in minor ways to conform to the NISP effort to standardize the security clearance process throughout the government. For example, paragraph (l) of the current regulations states that *sexual activity or notoriously disgraceful conduct* which may cause the individual to be subject to coercion or pressure constitute derogatory information. In the proposed regulation, the phrase *notoriously disgraceful conduct* is omitted. The term *sexual activity* would be modified by the word *deviant*. In addition, the proposed regulation would include child abuse and domestic violence as activities that may subject an individual to coercion or pressure.

Section 710.20 Purpose of the Procedures—

The language in this section would be simplified by eliminating unnecessary verbiage.

Section 710.21 Suspension of Access Authorization—

The current regulations allow a choice to be made whether to suspend an individual's access authorization during the administrative review process after information is received that raises a question concerning the individual's continued eligibility for access authorization. The proposed regulations would *require* that the local Director of Security suspend an individual's access authorization within two working days, and limit the delegation of this authority. The proposed regulations also would specify the offices that must be notified of this action, as well as the requirement that the DOE's Central Personnel Clearance Index be updated. The proposed regulation would require that the individual be informed of the suspension in writing and that the individual be notified, in general terms, of the reasons why the access authorization has been suspended. Finally, it would require the Manager to submit a request to the Director, Office of Safeguards and Security, at DOE Headquarters to institute administrative review procedures under this subpart within ten calendar days of the date of suspension.

Section 710.22 Notice to Individual—

The proposed regulation would tell the individual that there is the option of resolving the matter either by the Operations Office Manager on the basis of the existing information, or by personal appearance before a Hearing Officer. The proposed regulation would also provide for the situation in which an individual requests a hearing but does not file an answer to the notification letter. In that event, the request for hearing would be deemed to be a general denial of all of the reported information. Finally, the individual would be notified that the DOE Counsel will be representing the interests of the DOE at the hearing, and that any statements made to the DOE Counsel may be used in the proceeding.

Section 710.23 Additional Information—

The proposed section would describe four additional items of information that must be a part of the notification letter. Three of the items are now required by DOE regulations. The addition would require the DOE to advise the individual of the right to counsel (at his or her own expense) at each and every stage of the proceeding.

Section 710.24 Extensions of Time by the Operations Office Manager—

No substantive changes would be made to this section, which would be renumbered from § 710.24(b) in the current regulations.

Section 710.25 Appointment of DOE Counsel—

The language in this section would be simplified, and the title of this person would be changed from Hearing Counsel to DOE Counsel.

Section 710.26 Appointment of Hearing Officers; Prehearing Conference; Commencement of Hearings—

This section would be changed to reflect the use of Federal employees rather than contractors as Hearing Officers. When the Manager receives a request for a hearing, it will be forwarded, together with a copy of the notification letter and the individual's response, to the Director of DOE's Office of Hearings and Appeals, who would appoint a Hearing Officer. The Office of Hearings and Appeals would then notify the DOE Counsel and the individual of the Hearing Officer's identity. Unlike the current regulations which provide an oversight role for the Manager during the hearing process, the proposed regulations would remove this function from the Manager and vest control of the hearing in the Hearing Officer.

Paragraph (d) would give the Hearing Officer all powers necessary to regulate the conduct of the hearing, including the power to issue subpoenas. Scheduling of the hearing would be the responsibility of the Hearing Officer, although the regulations would continue to state that hearings will usually be held at or near the appropriate DOE facility and will be scheduled within 90 calendar days from the date the individual's request for hearing is received by the Office of Hearings and Appeals. The proposed regulations would add a requirement that a prehearing conference be scheduled by the Hearing Officer at least seven calendar days prior to the date scheduled for the hearing, and would provide that the conference will usually be done by telephone. The current provision allowing an individual to challenge the appointment of the Hearing Officer for cause would be eliminated; however, this would not preclude an individual from moving for recusal of a Hearing Officer.

Section 710.27 Conduct of Proceedings—

This section would be significantly changed from the current regulations. Since the DOE will use experienced professional Hearing Officers from its Office of Hearings and Appeals, much of the language detailing how the hearing will be run has been eliminated. Paragraph (h) of the proposed rules would direct the conduct of the hearing in general terms.

Paragraph (d) would clarify the role of the DOE Counsel in the hearing by stating that he or she will present the evidence supporting the issues raised in the notification letter. The proposed regulation would eliminate the rule in the current regulations that the DOE Counsel can express no opinion concerning the merits of the case. Also eliminated would be the duty of the DOE Counsel to advise the individual of his rights when he is not represented by counsel, as this function will be assumed by the Hearing Officer.

Paragraphs (k) through (n) would specify special procedures for dealing with information adverse to the individual in certain situations where it is not possible for the individual to cross-examine the source of the information, e.g., when a witness is a confidential informant, or when the information is classified. Changes would be made to these provisions in the proposed regulations to conform to the language of Executive Order 10865, 25 FR 1583 (February 20, 1960).

Section 710.28 Opinion of the Hearing Officer—

The proposed regulations would require the Hearing Officer to make findings of fact and render an initial opinion whether to grant or restore access authorization to the individual. As with the current regulations, that opinion should be issued within 30 calendar days of receipt of the hearing transcript or the close of the record, whichever is later. Copies of the opinion will be served on the individual, his representative, DOE Counsel, the Operations Office Manager, and the DOE's Office of Security Affairs. Either DOE's Office of Security Affairs or the individual may seek review of the opinion by the Director, Office of Hearings and Appeals, pursuant to § 710.29.

Section 710.29 Action on the Hearing Officer's Opinion—

In the current regulations, § 710.29 deals with "new evidence." That provision would be renumbered and moved to § 710.30 in the proposed regulations. As explained below, the proposed §§ 710.29 and 710.30 would replace §§ 710.30 through 710.32 in the current regulations.

The current regulations (§ 710.31) provide for review of the

recommendation of the Hearing Officer by three Personnel Security Review Examiners, who may not be Federal employees. Section 710.29 of the proposed regulations would provide instead that the review will be done by the Director of DOE's Office of Hearings and Appeals. Either the Office of Security Affairs or the individual may seek review by filing a request with the Director of Hearings and Appeals. The party requesting review must file a statement identifying the issues on which the Director, Office of Hearings and Appeals, should focus. The opposing party would have an opportunity to file an answering statement. The Director of the Office of Hearings and Appeals would be authorized to govern the conduct of the review proceeding, and would be required to issue an opinion within 45 days after the record is closed.

Under § 710.29(e) of the proposed regulations, after the opinion is issued by the Director of Hearings and Appeals, the Director of the Office of Security Affairs would make the final determination regarding the individual's access authorization. In the event of an adverse determination, proposed § 710.29(f) specifies that the Director of Security Affairs must indicate his findings with respect to each allegation contained in the notification letter.

Section 710.30 New Evidence—

This section would be renumbered from § 710.29 in the current regulations. Some references in this section would be changed to reflect the new role of the Office of Hearings and Appeals, and the process for dealing with new evidence would be simplified accordingly.

Section 710.31 Action by the Secretary—

This section would be renumbered from § 710.33 in the current regulations. While some references in this section would be changed, and the language simplified, no substantive changes would be made to this section.

Section 710.32 Reconsideration of Access Eligibility—

This section would be renumbered from § 710.34 in the current regulations. It is substantially unchanged from the current version.

Section 710.33 Terminations—

No substantive changes would be made to this section, which would be renumbered from § 710.35 in the current regulations.

Section 710.34 Attorney Representation—

No substantive changes would be made to this section, which would be renumbered from § 710.36 in the current regulations.

Section 710.35 Time Frames—

No substantive changes would be made to this section, which would be renumbered from § 710.39 in the current regulations. Finally, §§ 710.37 and 710.38 in the current regulations ("Certifications" and "Washington Area Cases") would be deleted as unnecessary.

IV. Procedural Requirements

A. Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Executive Order 12612

Executive Order 12612 requires that regulations or rules be reviewed for direct effects on States, on the relationship between the national government and the States, or in the distribution of power among various levels of government. If there are sufficient substantial direct effects, then Executive Order 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating or implementing a regulation or rule. Today's proposed regulations do not affect any traditional State function. There are therefore no substantial direct effects requiring evaluation or assessment under Executive Order 12612.

C. Regulatory Flexibility Analysis

These regulations were reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., which requires preparation of a regulatory flexibility analysis for any regulations that will have a significant economic impact on a substantial number of small entities. DOE finds that §§ 603 and 604 of that Act do not apply to this rule because it will not have a significant economic impact on a substantial number of small entities. Thus the preparation of a regulatory flexibility analysis is not warranted.

D. NEPA Review

There is no impact on the human environment under the regulatory amendments being issued today. Accordingly, DOE has determined that this is not a major Federal action with significant impact upon the quality of the human environment and, therefore, preparation of an environmental assessment or an environmental impact statement is not required under the National Environmental Policy Act.

E. Paperwork Reduction Act

There will be no additional paperwork burden imposed by the amendments issued today. Therefore, the goals of the Paperwork Reduction Act are not diminished by the amendments.

V. Opportunity for Public Comment

No substantial issue of fact or law exists with respect to the amendments, and the amendments will not have a substantial impact on the Nation's economy or large numbers of individuals or businesses. Thus, DOE will not provide an opportunity for oral presentation of views or arguments regarding the amendments.

The public is invited to submit written comments regarding the amendments set forth in this notice. Submit comments to the address indicated in the "addresses" section of this preamble and write on the outside of the envelope the designation "Amendment of Rules Governing Procedures for Determining DOE Access Authorizations." Ten copies should be submitted. Comments may be sent via electronic mail to an Office of Hearings and Appeals x.400 mail address, which is:

/S=OHA/O=HQ/PRMD=USDOE/
ADMD=ATTMAIL/C=US.

Comments sent to this address will be included as part of the official record. All comments received by the DOE will be available for public inspection and copying in the DOE's Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, telephone number (202) 586–6020, between 9 a.m. and 4 p.m. Monday through Friday, as well as the Office of Hearings and Appeals Public Reference Room, room 1E–234, telephone number (202) 586–8001, between 1 and 5 p.m. Monday through Friday.

The Office of Hearings and Appeals routinely publishes the text of most of the decisions it issues in a loose-leaf service called the Federal Energy Guidelines. Where information that is arguably private is contained in those decisions, a party is given an opportunity to request that the private information not be published. In that

instance, the determination is published with private information omitted. The Office of Hearings and Appeals proposes to publish summaries of its personnel security Hearing Officer determinations, as well as determinations issued on appeals. However, no summary of either a hearing or appeal decision will be published in a given case until a final determination has been made on an individual's access authorization. It specifically invites comments on this matter.

List of Subjects in 10 CFR Part 710

Administrative practice and procedure, Classified information, Government contracts, Government employees, Nuclear materials.

Issued in Washington, DC, on December 1, 1993.

John G. Keliher,

Direcotor, Office of Intelligence and National Security.

For the reasons set forth in the preamble, part 710 of title 10 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SPECIAL NUCLEAR MATERIAL

1. The authority citation for part 710 is revised to read as follows:

Authority: Atomic Energy Act of 1954, sec. 145, 68 Stat. 942, as amended (42 U.S.C. 2165); Atomic Energy Act of 1954, sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); E.O. 10450, 3 CFR 1949–1953 comp., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 comp., p. 398, as amended, 3 CFR, Chap. IV.

2. The Part heading is revised to read as set forth above.

3. Subpart A of part 710 is revised to read as set forth below:

Subpart A—General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material

General Provisions

Sec.

Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material

Procedures

Miscellaneous

Appendix A to Subpart A—Selected Provisions of the Atomic Energy Act of 1954, As Amended, Sec. 145 (42 U.S.C. 2165), Sec. 161 (42 U.S.C. 2201)

Subpart A—General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material

General Provisions

§710.1 Purpose.

(a) This subpart establishes the criteria, procedures, and methods for resolving questions concerning the eligibility of individuals who are employed by, or applicants for employment with, Department of Energy (DOE) contractors, agents, and access permittees of the DOE, individuals who are DOE employees or applicants for DOE employment, and other persons designated by the Secretary of Energy, for access to Restricted Data or special nuclear material, pursuant to the Atomic Energy Act of 1954, as amended, or for access to national security information.

(b) This subpart is published to implement Executive Order 12356, 47 FR 14874 (April 2, 1982); Executive Order 10865, 25 FR 1583 (February 24, 1960); and Executive Order 10450, 18 FR 2489 (April 27, 1954), all as amended.

§710.2 Scope.

The criteria and procedures outlined in this subpart shall be used in those cases in which there are questions of eligibility for DOE access authorization involving:

(a) Employees (including consultants) of, and applicants for employment with, contractors and agents of the DOE;

(b) Access permittees of the DOE and their employees (including consultants) and applicants for employment;

(c) Employees (including consultants) of, and applicants for employment with, the DOE; and

(d) Other persons designated by the Secretary of Energy.

§710.3 Reference.

The pertinent sections of the Atomic Energy Act of 1954, as amended, relative to this regulation are set forth in appendix A to this subpart.

§710.4 Policy.

(a) It is the policy of DOE to provide for the security of its programs in a manner consistent with traditional American concepts of justice and fairness. To this end, the Secretary has established criteria for determining eligibility for access authorization and procedures that will afford those individuals described in § 710.2 the opportunity for administrative review of questions concerning their eligibility for access authorization.

(b) In instances where the individual has been convicted of a crime punishable by imprisonment of six (6) months or longer, or the individual is currently awaiting or serving a form of preprosecution probation, or suspended or deferred sentencing, court ordered probation, or parole in conjunction with an arrest or criminal charges initiated against the individual for a crime that is punishable by imprisonment of six (6) months or longer, the DOE may suspend processing an application for access authorization until such time as the criminal prosecution, suspended sentence, deferred sentencing, probation, or parole has been completed.

(c) DOE may suspend processing an application for access authorization until such time as any individual has resided in the United States, its territories or possessions, for a period of time equivalent to the period of time appropriate to the investigative requirements for the access authorization that is required.

(d) DOE may suspend processing an application for access authorization until such time as any individual has taken steps to formally renounce dual citizenship, or otherwise resolves questions regarding national allegiance.

(e) DOE may suspend processing an application for access authorization whenever an individual fails to fulfill the responsibilities described in § 710.6.

§710.5 Definitions.

(a) As used in this subpart:

Access authorization means an administrative determination that an individual is eligible for access to classified matter or is eligible for access

to, or control over, special nuclear material.

DOE Counsel means a DOE-designated attorney assigned to represent DOE in proceedings under this subpart. DOE Counsel shall be a U.S. citizen and shall have been subject to a favorably adjudicated background investigation.

Hearing Officer means a DOE employee appointed by the Director, Office of Hearings and Appeals, pursuant to § 710.26. A Hearing Officer shall be a U.S. citizen and shall have been subject to a favorably adjudicated background investigation.

Local Director of Security means the Operations Office or Naval Reactors Office Division Director of Security, or other similar title; for Washington, DC area cases, the Director, Headquarters Operations Division; for the Oak Ridge Operations Office, the Director of Personnel; for the Albuquerque Operations Office, the Director of the Personnel Security Division; for the Savannah River Operations Office, the Director of Internal Security Division; and any person designated in writing to serve in one of the aforementioned positions in an "acting" capacity.

Operations Office Manager or *Manager* means the Manager of a DOE Operations Office, the Manager of the Rocky Flats Office, the Manager of the Pittsburgh Naval Reactors Office, the Manager of the Schenectady Naval Reactors Office, and, for Washington, DC area cases, the Director, Office of Safeguards and Security.

Secretary means the Secretary of Energy, as provided by section 201 of the Department of Energy Organization Act.

Special nuclear material means plutonium, uranium enriched in the isotope 233, or in the isotope 235, and any other material which, pursuant to the provisions of section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or any material artificially enriched by any of the foregoing, not including source material.

(b) Throughout this subpart the use of the male gender shall include the female gender and vice versa.

Criteria for Determining Eligibility for Access to Classified Matter or Special Nuclear Material

§ 710.6 Cooperation by the individual.

It is the responsibility of the individual to cooperate by providing full, frank, and truthful answers to DOE's relevant and material questions, and when requested, to furnish or authorize others to furnish information that the DOE deems pertinent to the individual's eligibility for DOE access authorization. This obligation to cooperate applies when completing security forms, during the course of a personnel security background investigation or reinvestigation, and at any stage of DOE's processing of the individual's access authorization, including but not limited to, personnel security interviews, DOE-sponsored mental evaluations, and other authorized DOE investigative activities under this subpart. The individual may elect not to cooperate; however, such refusal may prevent DOE from reaching an affirmative finding required for granting or continuing access authorization. In this event, any security clearance then in effect may be administratively terminated, or, for applicants, further processing may be terminated.

§ 710.7 Application of the criteria.

(a) The decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.

(b) To assist in making these determinations, on the basis of all the information in a particular case, there are set forth in this subpart criteria consisting of a number of specific types of derogatory information. These criteria are not exhaustive but contain the principal types of derogatory information which create a question as to the individual's eligibility for access authorization. While there must necessarily be adherence to such criteria, DOE is not limited thereto, or precluded from exercising its judgment that information or facts in a case under its cognizance are derogatory although at variance with, or outside the scope of, the stated categories. These criteria are subject to continuing review and may be revised from time to time as experience and circumstances may make desirable.

(c)(1) When the reports of investigation of an individual or other reliable information reasonably tend to establish the validity and significance of one or more of the items in the criteria, or other information or facts which are derogatory, although outside the scope of the stated categories, such information shall be regarded as substantially derogatory and create a question as to the individual's eligibility for access authorization. The local Director of Security will authorize the conduct of an interview with the individual, or request other appropriate actions, and, on the basis of such interview and/or actions, may authorize the granting or continuation of access authorization. If the question as to the individual's eligibility is not resolved through interview, and/or other actions, which may include a DOE-sponsored mental evaluation, the local Director of Security will submit the matter to the Manager. If the Manager agrees that unresolved derogatory information is present, and that appropriate attempts to resolve such derogatory information have failed, the Manager shall forward the individual's case to the Director, Office of Safeguards and Security, with a request for authority to conduct a hearing. The Director, Office of Safeguards and Security, may authorize:

(i) The granting of access authorization,

(ii) Such other action as the Director deems appropriate, or

(iii) The institution of the procedures set forth in § 710.20 through § 710.32.

(2) The Director, Office of Safeguards and Security, must authorize one of these options within 30 calendar days of the receipt of the case from the Manager, unless an extension is granted by the Director, Office of Security Affairs.

(d) In resolving a question concerning an individual's eligibility for access authorization, the DOE shall consider: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

§ 710.8 Criteria.

Derogatory information shall include, but is not limited to, information that the individual has:

(a) Committed, prepared or attempted to commit, or aided, abetted or conspired with another to commit or attempt to commit any act of sabotage, espionage, treason, terrorism, or sedition.

(b) Knowingly established or continued a sympathetic association with a saboteur, spy, terrorist, traitor, seditionist, anarchist, or revolutionist, espionage agent, or representative of a

foreign nation whose interests are inimical to the interests of the United States, its territories or possessions, or with any person advocating the use of force or violence to overthrow the Government of the United States or any state or subdivision thereof by unconstitutional means.

(c) Knowingly held membership in or had a knowing affiliation with, or has knowingly taken action which evidences a sympathetic association with the intent of furthering the aims of, or adherence to, and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons which advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or Laws of the United States or any state or subdivision thereof by unlawful means.

(d) Publicly or privately advocated, or participated in the activities of a group or organization, which has as its goal, revolution by force or violence to overthrow the Government of the United States or the alteration of the form of Government of the United States by unconstitutional means with the knowledge that it will further those goals.

(e) Parent(s), brother(s), sister(s), spouse, or offspring residing in a nation whose interests may be inimical to the interests of the United States, or in satellites or occupied areas thereof (to be evaluated in the light of the risk that pressure applied through such relatives could force the individual to act contrary to national security).

(f) Deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to § 710.20 through § 710.32.

(g) Failed to protect classified matter, or safeguard special nuclear material; or violated or disregarded security or safeguards regulations to a degree which would be inconsistent with the national security; or disclosed classified information to a person unauthorized to receive such information.

(h) An illness or mental condition of a nature which, in the opinion of a board-certified psychiatrist or other licensed physician or a licensed clinical psychologist, causes, or may cause, a significant defect in judgment or reliability.

(i) Refused to testify before a Congressional Committee, Federal or state court, or Federal administrative body, regarding charges relevant to eligibility for DOE, or another Federal agency's access authorization.

(j) Been, or is, a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist or other licensed physician or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.

(k) Trafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by law.

(l) Engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to, criminal behavior, deviant sexual activity, child abuse, domestic violence, a pattern of financial irresponsibility, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility.

Procedures

§ 710.20 Purpose of the procedures.

These procedures establish methods for the conduct of the administrative review of questions concerning an individual's eligibility for access authorization when it is determined that such questions cannot be favorably resolved by interview or other action.

§ 710.21 Suspension of access authorization.

(a) In those cases where information is received which raises a question concerning the continued eligibility of an individual for DOE access authorization, the local Director of Security shall suspend the individual's DOE access authorization pending the final determination resulting from the operation of the procedures provided in this subpart. The access authorization of an individual shall not be suspended except by the direction of the local Director of Security. This authority to suspend access authorization may not be delegated but may be exercised by an individual who has been designated in writing as Acting local Director of Security.

(b) The suspension of DOE access authorization shall be effected within two working days of the completed security adjudication of the information which raises a question concerning the individual's eligibility for DOE access authorization.

(c) Upon suspension of an individual's access authorization pursuant to paragraph (a) of this section, the individual, the individual's employer, any other DOE Operations Office having an access authorization interest in the individual, and, if known, any other Government Agency where the individual holds a security clearance shall be notified immediately The Central Personnel Clearance Index shall also be updated. Notification to the individual shall be made in writing and shall reflect, in general terms, the reason(s) why the suspension has been effected.

(d) In addition, the Manager, within 10 calendar days of the date of suspension, shall submit a request for authority to conduct an administrative review proceeding, accompanied by an explanation of its basis, to the Director, Office of Safeguards and Security.

§ 710.22 Notice to individual.

(a) When the Director, Office of Safeguards and Security, has authorized the institution of administrative review procedures with respect to an individual's questioned eligibility for access authorization, in accordance with § 710.7(c), the Manager shall direct the preparation of a notification letter, approved by the local Office of Chief Counsel, or the Office of General Counsel for Headquarters cases, for delivery to the individual within 30 calendar days of the receipt of such directive from the Office of Safeguards and Security, unless an extension has been authorized by the Director, Office of Safeguards and Security. Where practicable, such letter shall be presented to the individual in person.

(b) The letter shall state:

(1) That reliable information in the possession of DOE has created a substantial doubt concerning the individual's eligibility for access authorization.

(2) The information which creates a substantial doubt regarding the individual's eligibility for access

authorization (which shall be as comprehensive and detailed as the national interest permits).

(3) That the individual has the option to have the substantial doubt regarding eligibility for access authorization resolved in one of two ways:

(i) By the Manager, without a hearing, on the basis of the existing information in the case;

(ii) By personal appearance before a Hearing Officer (a "hearing").

(4) That, if the individual desires a hearing, the individual must, within 20 calendar days of the date of receipt of the notification letter, indicate this in writing to the Manager from whom the letter was received.

(5) That the individual may also file with the Manager the individual's written answer to the reported information which raises the question of the individual's eligibility for access authorization, and that, if the individual elects to request a hearing without filing a written answer, the request shall be deemed a general denial of all of the reported information.

(6) That, if the individual so requests, a hearing will be scheduled before a Hearing Officer, with due regard for the convenience and necessity of the parties or their representatives, for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization;

(7) That, if a hearing is requested, the individual will have the right to appear personally before a Hearing Officer; to present evidence in his own behalf, through witnesses, or by documents, or both; and, subject to the limitations set forth in § 710.27(g), to be present during the entire hearing and be accompanied, represented, and advised by counsel or representative of the individual's choosing and at the individual's own expense;

(8) That the individual's failure to file a timely written request for a hearing before a Hearing Officer in accordance with paragraph (b)(4) of this section, unless time deadlines are extended for good cause, will be considered as a relinquishment by the individual of the right to a hearing provided in this subpart, and that in such event a final decision will be made by the Manager; and

(9) That in any proceedings under this subpart DOE Counsel will be participating on behalf of and representing the Department of Energy, and that any statements made by the individual to DOE Counsel may be used in subsequent proceedings.

§ 710.23 Additional information.

The notification letter referenced in § 710.22 shall also:

(a) Describe the individual's access authorization status until further notice;

(b) Advise the individual of the right to counsel at the individual's own expense at each and every stage of the proceeding;

(c) Provide the name and telephone number of the designated DOE official to contact for any further information desired, including an explanation of the individual's rights under the Privacy Act of 1974; and

(d) Include a copy of 10 CFR part 710, subpart A.

§ 710.24 Extensions of time by the Operations Office Manager.

The Manager may, for good cause shown, at the written request of the individual, extend the time for filing a written request for a hearing, and/or the time for filing a written answer to the matters contained in the notification letter. The Manager shall notify the Director, Office of Safeguards and Security, when such extensions have been approved.

§ 710.25 Appointment of DOE Counsel.

(a) Upon receipt from the individual of a written request for a hearing, an attorney shall forthwith be assigned by the Manager to act as DOE Counsel.

(b) DOE Counsel is authorized to consult directly with the individual if he is not represented by counsel, or with the individual's counsel or representative if so represented, to clarify issues and reach stipulations with respect to testimony and contents of documents and other physical evidence. Such stipulations, when entered into and approved by the Hearing Officer, shall be binding upon the individual and the DOE for the purposes of this subpart.

§ 710.26 Appointment of Hearing Officer; prehearing conference; commencement of hearings.

(a) Upon receipt of a request for a hearing, the Manager shall in a timely manner transmit that request to the Office of Hearings and Appeals, and identify the DOE Counsel. The Manager shall at the same time transmit a copy of the notification letter and the individual's response to the Office of Hearings and Appeals.

(b) Upon receipt of the hearing request from the Manager, the Director, Office of Hearings and Appeals, shall appoint, as soon as practicable, a Hearing Officer.

(c) Immediately upon appointment of the Hearing Officer, the Office of Hearings and Appeals shall notify the individual and DOE Counsel of the Hearing Officer's identity and the address to which all further correspondence should be sent.

(d) The Hearing Officer shall have all powers necessary to regulate the conduct of proceedings under this subpart, including, but not limited to, establishing a list of persons to receive service of papers, issuing subpoenas for witnesses to attend the hearing or for the production of specific documents or other physical evidence, administering oaths and affirmations, ruling upon motions, receiving evidence, regulating the course of the hearing, disposing of procedural requests or similar matters, and taking other actions consistent with the regulations in this subpart. Requests for subpoenas shall be liberally granted except where the Hearing Officer finds, based on arguments of the party(s), that the grant of subpoenas would clearly result in evidence or testimony that is repetitious, incompetent, irrelevant, or immaterial to the issues in the case. The Hearing Officer may take sworn testimony, sequester witnesses, control the dissemination or reproduction of any record or testimony taken pursuant to this part, including correspondence, or other relevant records or tangible evidence including, but not limited to, information retained in computerized or other automated systems in possession of the subpoenaed person.

(e) The Hearing Officer will determine the day, time, and place for the hearing. Hearings will normally be held at or near the appropriate DOE facility, unless the Hearing Officer determines that another location would be more appropriate. Normally the location for the hearing will be selected for the convenience of all participants. In the event the individual fails to appear at the time and place specified, the record in the case shall be closed and returned to the Manager, who will then make a final determination regarding the eligibility of the individual for DOE access authorization.

(f) At least 7 calendar days prior to the date scheduled for the hearing, the Hearing Officer will convene a prehearing conference for the purpose of discussing stipulations, exchanging exhibits, identifying witnesses, and disposing of other appropriate matters. The conference will usually be conducted by telephone.

(g) Hearings shall commence within 90 calendar days from the date the individual's request for hearing is received by the Office of Hearings and Appeals. Any extension of the hearing date shall be approved by the Director, Office of Hearings and Appeals.

§ 710.27 Conduct of hearings.

(a) In all hearings conducted under this subpart, the individual shall have the right to be represented by a person of his own choosing. The individual is responsible for producing witnesses in his own behalf, including requesting the issuance of subpoenas, if necessary, or presenting other proof before the Hearing Officer to support his defense to the allegations contained in the notification letter. With the exception of procedural or scheduling matters, the Hearing Officer is prohibited from initiating or otherwise engaging in ex parte discussions about the case during the pendency of proceedings under this part.

(b) Unless the Hearing Officer finds good cause for granting a waiver of this paragraph or granting an extension of time, in the event that the individual unduly delays the hearing, such as by failure to meet deadlines set by the Hearing Officer, the record shall be closed, and a final decision shall be made by the Manager on the basis of the record in the case.

(c) Hearings shall be open only to DOE Counsel, duly authorized representatives of the staff of DOE, the individual and his counsel or other representative, and such other persons as may be authorized by the Hearing Officer. Unless otherwise ordered by the Hearing Officer, witnesses shall testify in the presence of the individual but not in the presence of other witnesses.

(d) DOE Counsel shall present the evidence supporting the issues raised in the notification letter. The individual shall be afforded the opportunity of presenting evidence, including testimony by the individual in the individual's own behalf. The proponent of a witness shall conduct the direct examination of that witness. All witnesses shall be subject to cross-examination, if possible. Whenever reasonably possible, testimony shall be given in person.

(e) The Hearing Officer may ask the witnesses any questions which the Hearing Officer deems appropriate to assure the fullest possible disclosure of relevant and material facts.

(f) During the course of the hearing, the Hearing Officer shall rule on all questions presented to the Hearing Officer for the Hearing Officer's determination.

(g) In the event it appears during the course of the hearing that Restricted Data or national security information may be disclosed, it shall be the duty of the Hearing Officer to assure that disclosure is not made to persons who are not authorized to receive it.

(h) Formal rules of evidence shall not apply, but the Federal Rules of Evidence may be used as a guide for procedures and principles designed to assure production of the most probative evidence available. The Hearing Officer shall admit into evidence any matters, either oral or written, which are material, relevant, and competent in determining issues involved, including the testimony of responsible persons concerning the integrity of the individual. In making such determinations, the utmost latitude shall be permitted with respect to relevancy, materiality, and competency. The Hearing Officer may also exclude evidence which is incompetent, immaterial, irrelevant, or unduly repetitious. Every reasonable effort shall be made to obtain the best evidence available. Hearsay evidence, including sworn affidavits and statements by confidential informants, may in the discretion of the Hearing Officer and for good cause shown be admitted without strict adherence to technical rules of admissibility and shall be accorded such weight as the circumstances warrant.

(i) Testimony of the individual and witnesses shall be given under oath or affirmation. Attention of the individual and each witness shall be directed to 18 U.S.C. 1001 and 18 U.S.C. 1621.

(j) The Hearing Officer shall endeavor to obtain all the facts that are reasonably available in order to arrive at findings. If, prior to or during the proceedings, in the opinion of the Hearing Officer, the allegations in the notification letter are not sufficient to cover all matters into which inquiry should be directed, the Hearing Officer shall recommend to the Operations Office Manager concerned, that, in order to give more adequate notice to the individual, the notification letter should be amended. Any amendment shall be made with the concurrence of the local Office of Chief Counsel or the Office of General Counsel in Headquarters cases. If, in the opinion of the Hearing Officer, the circumstances of such amendment may involve undue hardships to the individual because of limited time to answer the new allegations in the notification letter, an appropriate adjournment shall be granted upon the request of the individual.

(k) A written or oral statement of a person relating to the characterization in the notification letter of any organization or person other than the individual may be received and considered by the Hearing Officer without affording the individual an opportunity to cross-examine the person making the statement on matters relating to the characterization of such organization or person, provided the individual is given notice that it has been received and may be considered by the Hearing Officer, and is informed of its contents provided such is not prohibited by paragraph (g) of this section.

(l) Any oral or written statement adverse to the individual relating to a controverted issue may be received and considered by the Hearing Officer without affording an opportunity for cross-examination in either of the following circumstances:

(1) The head of the agency supplying the statement certifies that the person who furnished the information is a confidential informant who has been engaged in obtaining intelligence information for the Government and that disclosure of the informant's identity would be substantially harmful to the national interest;

(2) The Secretary or his special designee for that particular purpose has preliminarily determined, after considering information furnished by the investigative agency as to the reliability of the person and the accuracy of the statement concerned, that:

(i) The statement concerned appears to be reliable and material; and

(ii) Failure of the Hearing Officer to receive and consider such statement would, in view of the access sought to Restricted Data, national security information, or special nuclear material, be substantially harmful to the national security and that the person who furnished the information cannot appear to testify—

(A) Due to death, severe illness, or similar cause, in which case the identity of the person and the information to be considered shall be made available to the individual, or

(B) Due to some other specified cause determined by the head of the agency to be good and sufficient.

(m) Whenever procedures under paragraph (l) of this section are used:

(1) The individual shall be given a summary or description of the information which shall be as comprehensive and detailed as the national interest permits, and

(2) Appropriate consideration shall be accorded to the fact that the individual did not have an opportunity to cross-examine such person(s).

(n) Records compiled in the regular course of business, or other physical evidence other than investigative reports obtained by DOE, may be received and considered subject to rebuttal without authenticating witnesses provided that such

information has been furnished to DOE by an investigative agency pursuant to its responsibilities in connection with assisting the Secretary to safeguard Restricted Data, national security information, or special nuclear material.

(o) Records compiled in the regular course of business, or other physical evidence other than investigative reports, relating to a controverted issue which, because they are classified, may not be inspected by the individual, may be received and considered provided that:

(1) The Secretary or his special designee for that particular purpose has made a preliminary determination that such physical evidence appears to be material;

(2) The Secretary or his special designee for that particular purpose has made a determination that failure to receive and consider such physical evidence would, in view of the access sought to Restricted Data, national security information, or special nuclear material sought, be substantially harmful to the national security; and

(3) To the extent that national security permits, a summary or description of such physical evidence is made available to the individual. In every such case, information as to the authenticity and accuracy of such physical evidence furnished by the investigative agency shall be considered.

(p) The Hearing Officer may request the local Director of Security to arrange for additional investigation on any points which are material to the deliberations of the Hearing Officer and which the Hearing Officer believes need extension or clarification. In this event, the Hearing Officer shall set forth in writing those issues upon which more evidence is requested, identifying where possible persons or sources from which the evidence should be sought. The local Director of Security shall make every effort through appropriate sources to obtain additional information upon the matters indicated by the Hearing Officer.

(q) A written transcript of the entire proceedings shall be made and, except for portions containing Restricted Data or national security information, a copy of such transcript shall be furnished the individual without cost.

(r) Whenever information is made a part of the record under the exceptions authorized by paragraphs (l) or (o) of this section, the record shall contain certificates evidencing that the determinations required therein have been made.

§ 710.28 Opinion of the Hearing Officer.

(a) The Hearing Officer shall carefully consider the record in view of the standards set forth herein and shall render an initial opinion as to whether the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest. In resolving a question concerning the eligibility of an individual for access authorization under these procedures, the Hearing Officer shall consider the factors stated in § 710.7(d) to determine whether the findings will be adverse or favorable.

(b) In reaching the findings, the Hearing Officer shall consider the demeanor of the witnesses who have testified at the hearing, the probability or likelihood of the truth of their testimony, their credibility, the authenticity and accuracy of documentary evidence, or lack of evidence on any material points in issue. If the individual is, or may be, handicapped by the non-disclosure to the individual of confidential information or by lack of opportunity to cross-examine confidential informants, the Hearing Officer shall take that fact into consideration. Possible impact of the loss of the individual's access authorization upon the DOE program shall not be considered by the Hearing Officer.

(c) The Hearing Officer shall make specific findings based upon the record as to the validity of each of the allegations contained in the notification letter and the significance which the Hearing Officer attaches to such valid allegations. These findings shall be supported fully by a statement of reasons which constitute the basis for such findings.

(d) The Hearing Officer's opinion shall be predicated upon the Hearing Officer's findings of fact. If, after considering all the factors in light of the criteria set forth in this subpart, the Hearing Officer is of the opinion that it will not endanger the common defense and security and will be clearly consistent with the national interest to grant or continue access authorization to the individual, the Hearing Officer shall render a favorable opinion; otherwise, the Hearing Officer shall render an adverse opinion.

(e) The Office of Hearings and Appeals shall issue the opinion of the Hearing Officer within 30 calendar days of the receipt of the hearing transcript by the Hearing Officer, or the closing of the record, whichever is later, unless an extension is granted by the Director, Office of Hearings and Appeals. Copies of the Hearing Officer's opinion will be provided to the Office of Security Affairs, the Manager, the individual concerned and his counsel or other representative, DOE Counsel, and any other party identified by the Hearing Officer. At that time, the individual shall also be notified of his right to request further review of his case pursuant to § 710.29.

(f) In the event the Hearing Officer's opinion is favorable to the individual, a copy of the administrative record in the case shall also be provided to the Office of Security Affairs. The Director, Office of Security Affairs will determine whether:

(1) To grant or reinstate the individual's access authorization, or

(2) To refer the case to the Director, Office of Hearings and Appeals, for further review.

(g) In the event the Hearing Officer's opinion is adverse to the individual, and the individual does not file a request for further review pursuant to § 710.29, a copy of the administrative record shall be provided to the Director, Office of Security Affairs, who shall make a final determination on the basis of the material contained in the administrative record.

§ 710.29 Action on the Hearing Officer's opinion.

(a) The Office of Security Affairs or the individual involved may file a request for review of the Hearing Officer's opinion issued under § 710.28 within 30 calendar days of receipt of the opinion. Any such request shall be filed with the Director, Office of Hearings and Appeals, and served on the other party

(b) Within 15 calendar days after filing a request for review under this section, the party seeking review shall file a statement identifying the issues on which it wishes the Director, Office of Hearings and Appeals, to focus. A copy of such statement shall be served on the other party, who may file a response within 20 days of receipt of the statement.

(c) The Director, Office of Hearings and Appeals, may initiate an investigation of any statement contained in the request for review and utilize any relevant facts obtained by such investigation in conducting the review of the Hearing Officer's opinion. The Director, Office of Hearings and Appeals, may solicit and accept submissions from either the individual or the Office of Security Affairs, that are relevant to the review, provided that both parties are afforded an opportunity to respond to all third person submissions. The Director, Office of Hearings and Appeals, may establish appropriate time frames to allow for

such responses. In reviewing the Hearing Officer's opinion, the Director, Office of Hearings and Appeals, may consider any other source of information that will advance the evaluation. All information obtained under this section shall be made part of the administrative record.

(d) Within 45 days of the closing of the record, the Director, Office of Hearings and Appeals, shall make specific findings disposing of each substantial issue identified in a written statement in support of the request for review and the written response submitted by either the individual or the Office of Security Affairs, and shall predicate his opinion on the administrative record, including any new evidence that may have been submitted pursuant to § 710.30. If, after considering all the factors in light of the criteria set forth in this subpart, the Director, Office of Hearings and Appeals, is of the opinion that it will not endanger the common defense and security and will be clearly consistent with the national interest to grant or continue access authorization to the individual, the Director, Office of Hearings and Appeals, shall render an opinion favorable to the individual; otherwise, the Director, Office of Hearings and Appeals, shall render an opinion adverse to the individual. The written opinion of the Director, Office of Hearings and Appeals, shall be provided to the Director, Office of Security Affairs, accompanied by the administrative record in the case. The Director, Office of Hearings and Appeals, shall notify the individual of the foregoing action.

(e) Within 30 calendar days of receipt of the opinion of the Director, Office of Hearings and Appeals, the Director, Office of Security Affairs, will make the final determination, based on a complete review of the record, whether access authorization shall be granted or denied, or reinstated or revoked. If, after considering all of the factors in light of the criteria set forth in this subpart, the Director, Office of Security Affairs, determines that it will not endanger the common defense and security and will be clearly consistent with the national interest, access authorization shall be granted to or reinstated for the individual; otherwise, the Director, Office of Security Affairs, shall determine that access authorization shall be denied to or revoked for the individual.

(f) The Director, Office of Security Affairs, shall, through the Director, Office of Safeguards and Security, inform the individual involved and his counsel or representative, in writing of the final determination and provide a copy of the written opinion rendered by the Director, Office of Hearings and Appeals. Copies of the correspondence shall also be provided to the Director, Office of Hearings and Appeals, the Manager, DOE Counsel, and any other party. In the event of an adverse determination, the correspondence shall indicate the findings by the Director, Office of Security Affairs, with respect to each allegation contained in the notification letter.

§ 710.30 New evidence.

(a) In the event of the discovery of new evidence prior to final determination of the individual's eligibility for access authorization, such evidence shall be submitted by the offering party to the Director, Office of Safeguards and Security.

(b) The Director, Office of Safeguards and Security, shall: (1) Refer the matter to the Hearing Officer appointed in the individual's case if the Hearing Officer has not yet issued an opinion. The Hearing Officer getting the application for the presentation of new evidence shall determine the appropriate form in which any new evidence, and the other party's response, shall be received, e.g., by testimony before the Hearing Officer, by deposition or by affidavit. (2) In those cases where the Hearing Officer's opinion has been issued, the application for presentation of new evidence shall be referred to the Director, Office of Hearings and Appeals, or the Director, Office of Security Affairs, depending upon where the case resides. In the event that the Director, Office of Hearings and Appeals, or Director, Office of Security Affairs, determines that the new evidence should be received, he shall determine the form in which it, and the other party's response, shall be received.

(c) When new evidence submitted by either party is received into the record, the opposing party shall be afforded the opportunity to cross-examine the source of the new information or to submit a written response, unless the information is subject to the exceptions in § 710.27 (l) or (o).

§ 710.31 Action by the Secretary.

(a) Whenever an individual has not been afforded an opportunity to cross-examine witnesses who have furnished information adverse to the individual under the provisions of § 710.27 (l) or (o), only the Secretary may issue a final determination denying or revoking the access authorization after personally reviewing the record.

(b) When the Secretary makes a final determination regarding the individual's eligibility for DOE access authorization, the individual will be notified, by the Director, Office of Security Affairs, of that decision and of the Secretary's findings with respect to each allegation contained in the notification letter and each substantial issue identified in the statement in support of the request for review.

(c) Nothing contained in these procedures shall be deemed to limit or affect the responsibility and powers of the Secretary to issue subpoenas or to deny or revoke access to Restricted Data, national security information, or special nuclear material if the security of the nation so requires. The Secretary's authority may not be delegated and may be exercised only when the Secretary determines that the procedures prescribed in paragraphs 710.27 (l) or (o) cannot be invoked consistent with the national security, and such determination shall be conclusive.

§ 710.32 Reconsideration of access eligibility.

(a) Where, pursuant to the procedures set forth in §§ 710.20 through 710.31, the Director, Office of Security Affairs, or the Secretary has made a determination granting or reinstating access authorization to an individual, the individual's eligibility for access authorization shall be reconsidered when previously unconsidered substantially derogatory information is identified, or the individual violates a commitment or promise upon which the DOE previously relied to favorably resolve an issue of access eligibility.

(b) Where, pursuant to those procedures, the Manager, Director, Office of Security Affairs, or the Secretary has made a determination denying or revoking access authorization to an individual, the individual's eligibility for access authorization may be reconsidered when there is a bona fide offer of employment requiring access to Restricted Data, national security information or special nuclear material, and there is either:

(1) Material and relevant new evidence which the individual and the individual's representatives are without fault in failing to present earlier, or

(2) Convincing evidence of reformation or rehabilitation.

(c) A request for reconsideration shall be submitted in writing to the Manager having jurisdiction over the position for which access authorization is required. A request for reconsideration shall be accompanied by an affidavit setting forth in detail the new evidence or evidence of reformation or rehabilitation. The Manager shall notify

the individual as to whether the individual's eligibility for access authorization will be reconsidered and, if so, the method by which such reconsideration will be accomplished.

(d) Final determinations regarding eligibility for DOE access authorization in reconsideration cases shall be made by the Director, Office of Security Affairs.

Miscellaneous

§ 710.33 Terminations.

In the event the individual is no longer an applicant for access authorization or no longer requires access authorization, the procedures of this subpart shall be terminated without a final determination as to the individual's eligibility for access authorization.

§ 710.34 Attorney representation.

In the event the individual is represented by an attorney or other representative, the individual shall file with the Hearing Officer and DOE Counsel a document designating such attorney or representative and authorizing such attorney or representative to receive all correspondence, transcripts, and other documents pertaining to the proceeding under this subpart.

§ 710.35 Time frames.

Statements of time established for processing aspects of a case under this subpart are the agency's desired time frames in implementing the procedures set forth in this subpart. They shall have no impact upon the final disposition of an access authorization by an Operations Office Manager, the Director, Office of Security Affairs, or the Secretary, and shall confer no rights upon an individual whose eligibility for access authorization is being considered.

Appendix A to Subpart A—Selected Provisions of the Atomic Energy Act of 1954, as Amended, Sec. 141 (42 U.S.C. 2161), Sec. 145 (42 U.S.C. 2165), Sec. 161 (42 U.S.C. 2201)

(By authority of the Energy Reorganization acts of 1974 (42 U.S.C. 5814) the Administrator of DOE or his designated representative is to be substituted for the "Commission" and "General Manager" as appropriate.)

Sec. 141. Policy. It shall be the policy of the Commission to control the dissemination and disclosure of Restricted Data in such a manner as to assure the common defense and security * * *

Sec. 145. Restriction. (a) No arrangement shall be made under section 31, no contract shall be made or continued in effect under section 141, and no license shall be issued under section 103 or 104, unless the person with whom such arrangement is made, the contractor or prospective contractor, or the prospective licensee agrees in writing not to permit any individual to have access to Restricted Data until the Civil Service Commission shall have made an investigation and report to the Commission on the character, association, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

(b) Except as authorized by the Commission or the General Manager upon a determination by the Commission or General Manager that such action is clearly consistent with the national interest, no individual shall be employed by the Commission nor shall the Commission permit any individual to have access to Restricted Data until the Civil Service Commission shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

(c) In lieu of the investigation and report to be made by the Civil Service Commission pursuant to subsection (b) of this appendix, the Commission may accept an investigation and report on the character, associations, and loyalty of an individual made by another Government agency which conducts personnel security investigations, provided that a security clearance has been granted to such individual by another Government agency based on such investigation and report.

(d) In the event an investigation made pursuant to subsections (a) and (b) of this appendix develops any data reflecting that the individual who is the subject of the investigation is of questionable loyalty, the Civil Service Commission shall refer the matter to the Federal Bureau of Investigation for the conduct of a full field investigation, the results of which shall be furnished to the Civil Service Commission for its information and appropriate action.

(e) If the President deems it to be in the national interest he may from time to time determine that investigations of any group or class which are required by subsections (a), (b), and (c) of this appendix be made by the Federal Bureau of Investigation.

(f) Notwithstanding the provisions of subsections (a), (b), and (c) of this appendix, a majority of the members of the Commission shall certify those specific positions which are of a high degree of importance or sensitivity, and upon such certification, the investigation, and reports required by such provisions shall be made by the Federal Bureau of Investigation.

(g) The Commission shall establish standards and specification in writing as to the scope and extent of investigations, the reports of which will be utilized by the Commission in making the determination, pursuant to subsections (a), (b), and (c) of this appendix, that permitting a person access to Restricted Data will not endanger the common defense and security. Such standards and specifications shall be based on the location and class or kind of work to be done and shall, among other considerations, take into account the degree of importance to the common defense and security of the Restricted Data to which access will be permitted.

(h) Whenever the Congress declares that a state of war exists, or in the event of a national disaster due to enemy attack, the Commission is authorized during the state of war or period of national disaster due to enemy attack to employ individuals and to permit individuals access to Restricted Data pending the investigation report, and determination required by section 145b, to the extent that and so long as the Commission finds that such action is required to prevent impairment of its activities in furtherance of the common defense and security.

Sec. 161. General provisions. In the performance of its functions the Commission is authorized to:

(a) Establish advisory boards to advise with and make recommendations to the Commission on the legislation, policies, administration, research and other matters; Provided, That the Commission issues regulations setting forth the scope, procedure, and limitations of the authority of each such board.

(b) Establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear material, and byproduct material as the Commission may deem necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property.

(c) Make such studies and investigations, obtain such information, and hold such meetings or hearings as the Commission may deem necessary or proper to assist it in the administration or enforcement of this Act, or any regulations or orders issued thereunder. For such purposes the Commission is authorized to administer oaths and affirmations, and by subpoena to require any person to appear and testify, or to appear and produce documents, or both, at any designated place. No person shall be excused from complying with any requirements under this paragraph because of his privilege against self-incrimination, but the immunity provisions of the compulsory Testimony Act of February 11, 1893, shall apply with respect to any individuals who specifically claims such privilege. Witnesses subpoenaed, under this subsection, shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

* * * * *

(i) Prescribe such regulations or orders as it may deem necessary (1) to protect Restricted Data received by any person in connection with any activity authorized pursuant to this Act, (2) to guard against the loss or diversion of any special nuclear material acquired by any person pursuant to section 53 or produced by any person in connection with any activity authorized pursuant to the Act, to prevent any use or disposition thereof which the Commission may determine to be inimical to the common defense and security, including regulations or orders designating activities, involving

quantities of special nuclear material which in the opinion of the Commission are important to the common defense and security, that may be conducted only by persons whose character, associations, and loyalty shall have been investigated under standards and specifications established by the Commission and as to whom the Commission shall have determined that permitting each person to conduct the activity will not be inimical to the common defense and security, and (3) to govern any activity authorized pursuant to this Act, including standards and restrictions governing the design, location, and operation of facilities used in the conduct of such activity in order to protect health and to minimize danger to life or property;

* * * * *

(n) Delegate to the General Manager or other officers of the Commission any of those functions assigned to it under this Act except those specified in sections 51, 57b., 61, 108, 123, 145b. (with respect to the determination of those persons to whom the Commission may reveal Restricted Data in the national interest), 145f. and 161a.

* * * * *

(p) Make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the purposes of this Act.

[FR Doc. 93–29845 Filed 12–7–93; 8:45 am]
BILLING CODE 6450–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064–AB28

Deposit Insurance Coverage

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule.

SUMMARY: The FDIC is proposing to amend its deposit insurance regulations to require that: Upon request, an insured depository institution disclose in writing to existing and prospective depositors of employee benefit plan funds certain capital information, including its current Prompt Corrective Action (PCA) capital category and whether employee benefit plan deposits would be eligible for "pass-through" insurance coverage; upon opening an account comprised of employee benefit plan funds, an insured depository institution disclose in writing its PCA capital category and whether the deposits are eligible for "pass-through" deposit insurance coverage; upon a reduction in its capital category from "well capitalized" to "adequately capitalized" an insured depository institution disclose to all its employee benefit plan depositors the institution's new PCA capital category and whether new, rolled-over or renewed employee benefit plan deposits are eligible for "pass-through" insurance coverage; and an insured depository institution disclose in writing to employee benefit plan depositors when new, rolled-over or renewed employee benefit plan deposits will not be eligible for "pass-through" deposit insurance coverage.

The FDIC also is proposing two technical amendments to its insurance regulations that are unrelated to the proposed amendments concerning "pass-through" insurance coverage. The technical amendments involve the insurance rules for joint accounts and accounts for which an insured depository institution is acting as a fiduciary.

The intended effects of the proposed rule on "pass-through" deposit insurance are to reduce the uncertainty about whether employee benefit plan deposits are eligible for "pass-through" deposit insurance coverage and to require insured depository institutions to provide timely disclosure to employee benefit plan depositors when "pass-through" deposit insurance coverage is no longer available. The two technical amendments are intended to clarify the insurance rules involving joint accounts and accounts for which an insured depository institution is acting as a fiduciary.

DATES: Written comments must be received by the FDIC on or before February 7, 1994.

ADDRESSES: Written comments should be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 - 17th Street, NW, Washington, DC, 20429. Comments may be hand-delivered to Room F–400, 1776 F Street, NW., Washington, DC 20429, on business days between 8:30 a.m. and 5 p.m. (FAX number: (202) 898–3838). Comments will be available for inspection in room 7118, 550 - 17th Street, N.W., Washington, D.C. between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Daniel M. Gautsch, Examination Specialist, Division of Supervision (202/898–6912) or Joseph A. DiNuzzo, Counsel, Legal Division (202/898–7349), Federal Deposit Insurance Corporation, Washington, DC, 20429.

SUPPLEMENTARY INFORMATION:

Background

Section 311 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2236) (FDICIA) amended various provisions of the Federal Deposit Insurance Act (FDI Act) governing deposit insurance coverage. The FDIC Board of Directors (Board) recently revised the FDIC's insurance regulations to incorporate the amendments made by section 311 of FDICIA to the FDI Act (58 FR 29952 (May 25, 1993)). In particular, § 330.12 of the FDIC's regulations (12 CFR 330.12) was substantially revised to reflect the new limitations imposed by section 311 of FDICIA affecting the "pass-through" deposit insurance provided for employee benefit accounts. (The expression "pass-through" insurance means that the insurance coverage passes through to each owner/beneficiary of the applicable deposit.) As required by section 311 of FDICIA, under the revised insurance rules, whether or not an employee benefit plan deposit is entitled to "pass-through" deposit insurance coverage is based, in part, upon the capital status of an insured depository institution at the time the deposit is accepted.

Specifically, § 330.12(b) provides that employee benefit plan deposits are entitled to "pass-through" insurance coverage only if made in insured institutions that can accept brokered deposits (pursuant to section 29 of the FDI Act, 12 U.S.C. 1831f) at the time they accept the employee benefit plan deposits. Section 29 of the FDI Act prohibits insured depository institutions that are not "well capitalized", institutions that are "adequately capitalized" but have not obtained a waiver from the FDIC and "undercapitalized" institutions (or institutions in worse capital categories) from accepting brokered deposits.[1] A brokered deposit is defined in § 337.6 of the FDIC's regulations (12 CFR 337.6) as any deposit that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker.[2]

The revised § 330.12(b) reiterates an additional provision in section 311 of FDICIA providing that, even if an insured institution cannot accept brokered deposits, employee benefit plan deposits are eligible for "pass-through" insurance if, at the time the deposit is accepted: (1) The institution meets each applicable capital standard; and (2) the depositor receives a written

[1] "Well capitalized" insured institutions can, in certain circumstances, avoid a lapse in eligibility for "pass-through" insurance of employee benefit plan deposits, should the institution's PCA capital category be reduced to "adequately capitalized", by applying to the appropriate FDIC Division of Supervision Regional Office for an advance waiver solely for the purpose of continuing "pass-through" deposit insurance coverage.

[2] The FDIC recently amended the capital categories in § 337.6 to conform to the PCA capital category definitions in 12 CFR part 325, subpart B. 58 FR 54932 (Oct. 25, 1993).

statement from the institution that such deposits are eligible for insurance coverage on a "pass-through" basis. This provision applies only to "adequately capitalized" institutions that have not obtained a brokered deposits waiver from the FDIC and those that have been denied a waiver.

Need for the Proposed Rule

Section 330.12(b) permits but does not require an insured institution to disclose to existing or prospective depositors its capital levels or its PCA capital category.[3] The FDIC has received numerous comments from various sources on the difficulty of obtaining public information on an insured institution's capital levels and on its current PCA capital category. In response to those comments, the FDIC has indicated that FDIC regulations do not prohibit state nonmember banks from disclosing, upon request, their capital levels or PCA capital category to depositors and has encouraged employee benefit plan sponsors and administrators to obtain capital information directly from insured depository institutions. 58 FR 29954 (May 25, 1993).

Although, as indicated above, insured institutions generally are not prohibited from disclosing capital information to existing and prospective depositors, there is no regulatory requirement that an insured institution disclose this information.[4] There also is no requirement that when an insured institution's capital category changes (so that new employee benefit plan deposits are not eligible for "pass-through" insurance coverage) that it disclose this fact to existing and prospective employee benefit plan depositors.

Currently there are several sources from which an individual can obtain information about the capital status of an insured institution. Quarterly Consolidated Reports of Condition and Income (Call Reports) and Thrift Financial Reports (TFRs) are available, upon request at a nominal charge, from the FDIC or the institution's primary federal regulator. Uniform Bank Performance Reports (UBPRs), which compare individual institutions to their peer groups, and other reports are available from the Federal Financial Institutions Examination Council. In addition, financial data on banks and thrifts are available from state and federal banking regulators and private rating services. Many of these reports provide various ratios used to determine an institution's capital category; however, they may not be adequate for determining whether "pass-through" insurance coverage is available for deposits placed at an institution.

One problem is that only fairly sophisticated financial managers are likely to be able to ascertain an institution's capital category from these reports.

The reports also may not meet the "time of acceptance" requirement contained in the law.[5] In addition, the reports do not indicate institutions that have obtained a brokered deposit waiver from the FDIC or that are adequately capitalized but either have not applied for a brokered deposit waiver from the FDIC or have been denied such a waiver. Moreover, they do not indicate whether an institution has an enforcement action or capital directive outstanding thereby excluding it from the "well capitalized" capital category.

The Proposed Rule

The proposed revisions would require that:

1. Upon request (and within two business days after receipt of such request), an insured depository institution provide written notice to any existing or prospective depositor of employee benefit plan funds of the institution's leverage ratio, Tier 1 risked-based capital ratio, total risk-based capital ratio, PCA capital category and whether or not, in the opinion of the institution, employee benefit plan deposits made with the institution would be entitled to "pass-through" insurance coverage under §§ 330.12 (a) and (b) of the FDIC's regulations (12 CFR 330.12 (a) and (b)). Under §§ 330.12 (a) and (b), "pass-through" insurance shall not be provided if, at the time an employee benefit plan deposit is accepted, the institution may not accept brokered deposits pursuant to section 29 of the FDI Act unless, at the time the deposit is accepted: (1) The institution meets each applicable capital standard; and (2) the depositor receives a written statement from the institution indicating that such deposits are eligible for insurance coverage on a "pass-through" basis.[6]

2. Upon the opening of any account comprised of employee benefit plan funds, an insured depository institution provide written notice to the depositor of the institution's PCA capital category and whether or not such deposits are eligible for "pass-through" insurance coverage;

3. Within two business days after an insured depository institution's PCA capital category changes from "well capitalized" to "adequately capitalized", the institution provide written notice to all depositors of employee benefit plan funds of the institution's PCA capital category and whether or not new, rolled-over or renewed employee benefit plan deposits would be eligible for "pass-through" insurance coverage under §§ 330.12 (a) and (b); and

4. Within two business days after an insured depository institution's PCA capital category changes to a category below "adequately capitalized", the institution provide written notice to all depositors of employee benefit plan funds indicating that new, rolled-over or renewed deposits of employee benefit plan funds made on or after the date the institution's PCA capital category changed to a category below adequately capitalized will not be eligible for "pass-through" insurance coverage.

An institution's capital levels and PCA capital category are based on the capital and PCA regulations issued by the institution's primary federal regulator.[7]

The proposed rule is aimed at requiring the applicable disclosures at the most critical times when an

[3] For the respective federal banking regulator's PCA regulations, see 12 CFR parts 308 and 325 (FDIC), 12 CFR parts 208 and 263 (Board of Governors of the Federal Reserve System), 12 CFR parts 6 and 19 (Office of the Comptroller of the Currency) and 12 CFR part 565 (Office of Thrift Supervision).

[4] Moreover, the FDIC received a number of comments on its proposal to revise the deposit insurance rules (57 FR 49027, October 29, 1992) indicating that some employee benefit plan administrators find it necessary to independently verify the capital status of an insured institution in order to satisfy their fiduciary obligations.

[5] Under the PCA regulations, an institution is deemed to be in a particular capital category when its Call Report or TFR is due. It remains in that capital category until the next Call Report or TFR is due unless and until: (1) The institution receives an intervening report of examination which causes the institution to be in a different capital category; or (2) a material event occurs which causes the institution to be in a lower capital category (and it is confirmed by the institution's primary federal regulator); or (3) the institution receives a written notice from its primary federal regulator that it has been reclassified.

Because an institution's capital category is not necessarily held constant for an entire quarter, due to the potential for intervening material events noted above, employee benefit plan administrators theoretically will still have to ascertain the capital category of an institution on a daily basis.

Also, there can be a considerable lapse of time between the day each institution submits its Call Report or TFR and the date the information becomes available to the public. Call Reports and TFRs include only the raw financial data from which a depositor, if sophisticated enough, could calculate an institution's estimated capital ratios and then, at best, only estimate its PCA capital category.

[6] The recordkeeping requirements of § 330.4 of the FDIC's regulations also would have to be satisfied. 12 CFR 330.12(a) & 330.4.

[7] See footnote 3, above, for the applicable CFR citations.

employee benefit plan depositor needs to know whether "pass-through" insurance is available: When opening an account and when new, rolled-over or renewed employee benefit plan deposits are no longer eligible for "pass-through" coverage. Thus, an insured depository institution would be required to disclose its PCA capital category and whether employee benefit plan deposits would be eligible for "pass-through" deposit insurance coverage at the time an employee benefit account is opened and within two business days after its PCA capital category changes from "well capitalized" to "adequately capitalized".

In addition, an institution would have to notify all employee benefit depositors within two business days after its PCA capital category changes to a category below "adequately capitalized" and to inform the depositors that new, rolled-over or renewed employee benefit plan deposits would not be insured on a "pass-through" basis, unless and until the institution's PCA capital category improved and the other applicable requirements were satisfied.

The proposed rule also would require an insured depository institution to provide to all existing and prospective employee benefit plan depositors, upon request, the institution's capital levels, PCA capital category and whether employee benefit plan deposits would be eligible for "pass-through" insurance coverage. Inasmuch as it requires disclosure of an institution's capital levels, this provision goes beyond the other disclosure requirements of the proposed rule. The FDIC believes such information should be made available to provide existing and prospective employee benefit plan depositors with meaningful, objective information on an institution's capital condition. The capital ratios disclosed to a depositor should be the most recent information available, but need not be as of the date of the deposit. Obtaining this additional information could prove beneficial in determining whether to establish or continue a deposit relationship with the institution. As noted above, sufficient current financial information on an institution's capital levels may otherwise not be available.

The proposed rule would require notification to existing employee benefit plan depositors of a reduction in an institution's PCA capital category within two business days of such reduction.[8] Because a reduction in a depository institution's PCA capital category may mean that new, rolled-over or renewed employee benefit plan deposits might not be eligible for "pass-through" insurance coverage, the FDIC believes this relatively short two-day time frame is necessary and appropriate. Adopting a longer time frame may increase an employee benefit plan depositor's uninsured exposure. This is an issue on which the FDIC specifically requests comment, particularly as to the feasibility of compliance and other alternatives. The FDIC also expressly solicits comment on whether the proposed disclosures should be required when an institution's capital category has changed from "well capitalized" to "adequately capitalized" but the institution has obtained a brokered deposits waiver and, thus, there would be no change in the eligibility of employee benefit plan deposits for "pass-through" coverage.

Assuming such notice is required, specific comment is also requested on whether the final rule should include a specific notice that institutions would have to provide employee benefit plan depositors when an institution's PCA category changes from "well capitalized" to "adequately capitalized". One type of notice could read:

> On [date] [name of institution]'s Prompt Corrective Action (PCA) capital category changed from "Well Capitalized" to "Adequately Capitalized". [Because of] [or] [Despite] this change in [name of institution]'s PCA capital category, any employee benefit plan deposits placed, rolled-over or renewed with [name of institution] after [date] will [NOT] [or] [continue to] be eligible for "pass-through" deposit insurance coverage under § 330.12 of the FDIC's regulations. [This unavailability of "pass-through" insurance coverage will continue until the institution's PCA capital category improves and the other applicable requirements are satisfied.]

A sample disclosure also could be required if an institution's PCA capital category changed to a level below "adequately capitalized". It could read as follows:

> On [date] [name of institution]'s Prompt Corrective Action (PCA) capital category changed from [previous PCA category] to [current PCA capital category]. Because of this change in [name of institution]'s PCA capital category, any employee benefit plan deposits placed, rolled-over or renewed with [name of institution] after [date] will NOT be eligible for "pass-through" deposit insurance coverage under § 330.12 of the FDIC's regulations. This unavailability of "pass-through" insurance coverage will continue until the institution's PCA capital category improves and the other applicable requirements are satisfied.

The FDIC also specifically requests comment on the form of disclosure; for example: Whether the required disclosures should have to be in a separate mailing; whether a written acknowledgement from the intended recipient of the disclosure should be required; whether the disclosure should be required to be prominent and conspicuous (for example, requiring bold type); whether the disclosure should be part of the deposit agreement; whether other related information may be disclosed; and on any other aspects of the notification requirements.

The proposed rule would dramatically increase the chance that prospective and existing employee benefit plan depositors are provided with the information necessary to make an informed decision about where to place their funds. The proposed rule, however, would not bind the FDIC, in its deposit insurance determinations, to the information provided by the insured institution to depositors on the eligibility of employee benefit plan deposits for "pass-through" insurance coverage. The FDIC is not responsible for a depository institution's failure to provide the required notices to depositors or for erroneous information provided by insured institutions, intentionally or otherwise.

If the proposed rule is adopted, however, it is intended that compliance be monitored by the institution's primary federal regulator during the course of examinations. Violations of the regulatory requirements would be subject to the full array of enforcement sanctions (including the imposition of civil money penalties) contained in section 8 of the FDI Act, 12 U.S.C. 1818. In this connection, the FDIC requests specific comment on whether a free-standing enforcement and/or penalty provision should be included in § 330.12 as part of the proposed rule.

Minimal Regulatory Burden

It is the FDIC's overall intention to balance the undesirability of imposing regulatory requirements on insured institutions with the importance of providing timely notice to existing and prospective employee benefit plan depositors of the extent of "pass-through" insurance coverage on their deposits. Only institutions that accept employee benefit plan deposits would be subject to the proposed rule. Moreover, based on the most recent Call Report and TFR information (as of June 30, 1993), only 370 insured institutions reported data indicating a PCA capital category of "adequately capitalized". This represents approximately 2.7 percent of the 13,006 insured institutions reporting. In addition, more than 96 percent of all FDIC-insured

[8] See footnote 5, above, on how an institutions's PCA capital category may change.

institutions were "well capitalized" and, thus, employee benefit plan deposits placed with these institutions would be eligible for "pass-through" insurance.

The FDIC does not believe that it would be burdensome for an affected insured institution to disclose its PCA capital category because under existing rules an institution must know its individual PCA capital category in order to determine whether it is subject to certain statutorily mandated restrictions. Moreover, this information would greatly assist small, unsophisticated employee benefit plan depositors in making informed decisions about where to place their funds.

In addition, for purposes of the proposed rule, generally, the FDIC would deem an employee benefit plan depositor and a prospective employee benefit plan depositor to be the administrator or manager of the plan assets. The required information and notices, therefore, would have to be provided to such person, not to each participant in the plan.

The FDIC has consulted with the other federal regulators on the proposed rule and intends to continue to work with the other regulators to assure, among other things, consistent and minimally burdensome implementation of the final rule, if adopted.

Technical Amendments to Part 330 Unrelated to the Proposed Amendments to § 330.12

The FDIC also is proposing two technical amendments to its insurance regulations that are unrelated to the proposed amendments to § 330.12. The first would clarify the meaning of § 330.7(c) of the FDIC's regulations (12 CFR 330.7(c)) concerning joint accounts. That provision specifies the requirements an account must meet to qualify for separate insurance coverage as a joint account. Section 330.7(c) exempts certain types of accounts, including certificates of deposit, from the general requirement that each co-owner sign a signature card, but the regulation states that "all such deposit accounts must, in fact, be jointly owned". Some courts, contrary to the FDIC's longstanding interpretation, have interpreted the quoted language to require the FDIC to consider state law and evidence outside of the deposit account records of the insured institution to contradict otherwise unambiguous deposit account records, in connection with claims that what appear to be joint accounts are in fact individually owned accounts.

The proposed amendment would clarify that an account holder seeking to prove that what appears to be a joint account is actually an account held in a right and capacity other than joint ownership (for example, as an individual account) must satisfy the requirements of § 330.4(a) of the FDIC's regulations (12 CFR 330.4(a)) on the recognition of deposit ownership. Section 330.4(a) provides, in part, that, if the FDIC determines that the deposit account records of an insured depository institution are clear and unambiguous, no other records shall be considered as to the manner in which those funds are owned. Section 330.5(a) of the FDIC's regulations (12 CFR 330.5(a)) already explicitly addresses the situation where more than one natural person has the right to withdraw funds from an account. The proposed amendment applies to situations involving deposits which appear to be jointly owned but are claimed to be held in other rights and capacities.

Section 330.6(a) of the FDIC's regulations (*Id.* at 330.6(a)), which addresses the insurance coverage of agency or fiduciary type accounts, currently indicates that funds deposited by an insured depository institution acting in a fiduciary capacity are governed by § 330.10 of the insurance regulations. The second technical revision is a proposed amendment to § 330.6(a) to clarify that, starting December 19, 1993, § 330.10 will govern only when an insured depository institution is acting as a trustee of an irrevocable trust. As noted above, in May 1993 the FDIC amended § 330.10, along with several other sections of the insurance regulations, to implement revisions to the insurance rules made by section 311 of FDICIA (58 FR 29952 (May 25, 1993)). One of those required revisions limits, effective December 19, 1993, the separate insurance (provided for in § 330.10) applicable to accounts held by insured depository institutions in fiduciary capacities. The proposed technical amendment would simply cross-reference in § 330.6(a) the revision already made to § 330.10.

Request for Public Comment

The Board hereby requests comment on all aspects of the proposed rule, particularly those specifically mentioned above. The Board also solicits comment on whether the capital levels and PCA capital category of an institution should be made a general disclosure requirement in, for example, Call Reports. In this way, existing and prospective employee benefit plan depositors and other interested parties would be able to obtain an official, publicly available financial statement on the institution which clearly indicates this vital information. As noted above, this information is not currently available in any public document. Interested persons are invited to submit written comment during a 60-day comment period.

Paperwork Reduction Act

The proposed rule is intended to reduce uncertainty about whether employee benefit plan deposits are eligible for "pass-through" insurance coverage and to require depository institutions to provide timely disclosure to employee benefit plan depositors when "pass-through" deposit insurance coverage is no longer available. No collections of information pursuant to the Paperwork Reduction Act are contained in the proposed rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

The proposed rule would not have a significant impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). Accordingly, the Act's requirements relating to an initial and final regulatory flexibility analysis are not applicable.

List of Subjects in 12 CFR Part 330

Bank deposit insurance, Banks, banking, Savings and loan associations, Trusts and trustees.

The Board of Directors of the Federal Deposit Insurance Corporation hereby proposes to amend part 330 of title 12 of the Code of Federal Regulations as follows:

PART 330—DEPOSIT INSURANCE COVERAGE

1. The authority citation for Part 330 continues to read as follows:

Authority: 12 U.S.C. 1813(l), 1813(m), 1817(i), 1818(q), 1819(Tenth), 1820(f), 1821(a), 1822(c).

2. Section 330.6 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 330.6 Accounts held by an agent, nominee, guardian, custodian or conservator.

(a) * * * When such funds are deposited by an insured depository institution acting as a trustee of an irrevocable trust, the insurance coverage shall be governed by the provisions of § 330.10 of this part.

* * * * *

3. Section 330.7 is amended by revising paragraph (c) to read as follows:

§ 330.7 Joint ownership accounts.

* * * * *

(c) *Qualifying joint accounts.* (1) A joint deposit account shall be deemed to be a qualifying joint account, for purposes of this section, only if:

(i) All co-owners of the funds in the account are natural persons; and

(ii) Each co-owner has personally signed a deposit account signature card; and

(iii) Each co-owner possesses withdrawal rights on the same basis.

(2) The requirement of paragraph (c)(1)(ii) of this section shall not apply to certificates of deposit, to any deposit obligation evidenced by a negotiable instrument, or to any account maintained by an agent, nominee, guardian, custodian or conservator on behalf of two or more persons.

(3) All deposit accounts that satisfy the criteria in paragraph (c)(1) of this section (including those that come within the exception provided for in paragraph (c)(2) of this section) shall be presumed to be jointly owned unless, in accordance with the provisions of § 330.4(a) of this part, the deposit account records of the insured depository institution clearly indicate, to the satisfaction of the FDIC, that the account is owned in some other right or capacity. The signatures of two or more persons on the deposit account signature card or the names of two or more persons on a certificate of deposit or other deposit instrument shall be conclusive evidence that the account is a joint account unless the signature card, the certificate of deposit or other deposit instrument clearly states, to the satisfaction of the FDIC, that there is a contrary ownership capacity.

* * * * *

4. Section 330.12 is amended by adding a new paragraph (h) to read as follows:

§ 330.12 Retirement and other employee benefit plan accounts.

* * * * *

(h) *Disclosure of capital status.*—(1) *Disclosure upon request.* An insured depository institution shall, upon request, provide written notice to any existing or prospective depositor of employee benefit plan funds of the institution's leverage ratio, Tier 1 risk-based capital ratio, total risk-based capital ratio and prompt corrective action (PCA) capital category, all as defined in the regulations of the institution's primary federal regulator, and whether or not employee benefit plan deposits made with the institution would be eligible for "pass-through" insurance coverage under paragraphs (a) and (b) of this section. Such notice shall be provided to the depositor within two business days after receipt of the request for disclosure.

(2) *Disclosure upon opening of account.* An insured depository institution shall, upon the opening of any account comprised of employee benefit plan funds, provide written notice to the depositor of the institution's PCA capital category and whether or not such deposits are eligible for "pass-through" insurance coverage.

(3) *Disclosure by adequately capitalized institutions.* Whenever an insured depository institution receives notice or is deemed to have notice (under the PCA regulations issued by the institution's appropriate federal banking agency, as defined in section 3(q) of the Act (12 U.S.C. 1813(q)) that its PCA capital category has been reduced from "Well Capitalized" to "Adequately Capitalized", the institution shall provide written notice to all depositors of employee benefit plan funds of the institution's new PCA capital category and whether or not new, rolled-over or renewed employee benefit plan deposits would be eligible for "pass-through" insurance coverage under paragraphs (a) and (b) of this section. Such notice shall be provided within two business days after the institution receives notice or is deemed to have notice of such a reduction in its PCA capital category.

(4) *Disclosure by undercapitalized institutions.* Whenever an insured depository institution receives notice or is deemed to have notice (under the PCA regulations issued by the institution's appropriate federal banking agency, as defined in section 3(q) of the Act (12 U.S.C. 1813(q)) that its PCA capital category has been reduced from either "Well Capitalized" or "Adequately Capitalized" to a category below "Adequately Capitalized", it shall provide written notice to all existing depositors of employee benefit plan funds of its new PCA capital category and that new, rolled-over or renewed deposits of employee benefit plan funds made on or after the date the institution's capital category was reduced to a category below adequately capitalized would not be eligible for "pass-through" insurance coverage. Such written notice shall be provided within two business days after the institution receives notice or is deemed to have notice of such a reduction in its PCA capital category.

(5) *Definition of "employee benefit plan".* For purposes of this paragraph, the term *employee benefit plan* has the same meaning as provided under paragraph (g)(1) of this section but also includes any eligible deferred compensation plans described in section 457 of the Internal Revenue Code of 1986.

By order of the Board of Directors.

Dated at Washington, DC, this 30th day of November, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93–29877 Filed 12–7–93; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–ASO–23]

Proposed Amendment of Offshore Airspace Area; San Juan, PR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Offshore Airspace Area at Puerto Rico. This action would delete the exclusionary language from the legal description. The action would not change the dimensions of the airspace but would simplify the airspace and associated legal description.

DATES: Comments must be received on or before January 15, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 93–ASO–23, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 530, 1701 Columbia Avenue, College Park, Georgia 30337; telephone (404) 305–5585.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Patterson, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis

supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ASO–23." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 530, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Offshore Airspace Area at Puerto Rico. The intended effect of this action is to eliminate the exclusionary language in the legal description. The present exclusions are for additional Class C Airspace. The only effect would be to simplify the airspace and legal description. The coordinates for this airspace docket are based on North American Datum 83. Designations for Offshore Airspace Areas are published in Paragraph 6007 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1. The Offshore Airspace Area designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a significant regulatory action under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Para. 6007 Offshore Airspace Areas

* * * * *

San Juan Low, PR [Amended]

Fernando Luis Ribas Dominicci Airport, PR (lat. 18°27'25"N., long. 66°05'53"W.)

That airspace extending upward from 5,500 feet MSL within a 100-mile radius of the Fernando Luis Ribas Dominicci Airport.

* * * * *

Issued in College Park, Georgia, on November 19, 1993.

Michael J. Powderly,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 93–29930 Filed 12–7–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket No. 89F–0011]

Irradiation in the Production, Processing, and Handling of Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Tentative final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing its tentative decision to amend the food additive regulations to provide for the safe use of sources of radiation to irradiate frozen, packaged beefsteak for use in the National Aeronautics and Space Administration (NASA) space flight programs. FDA is also announcing its tentative decision to amend the food additive regulations to permit the use of packaging materials that are not listed in the regulations regarding food irradiation in the irradiation of frozen, packaged beefsteak for use in the NASA space flight programs. This action is in response to a petition filed by NASA.

DATES: Written comments by February 7, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Patricia A. Hansen, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9523.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the Federal Register of February 6, 1989 (54 FR 5679), FDA announced that a food additive petition (FAP 9M4125) had been filed by NASA, Washington, DC 20546, proposing that the food additive regulations be amended to provide for the safe use of sources of radiation to process beefsteaks for use in space flight programs. The agency is publishing a tentative final rule before proceeding to

final action because it is including provisions regarding the packaging materials to be used with the beefsteaks that it did not announce in the notice of filing for this petition.

II. Evaluation of Safety

In assessing the safety of food additives, including the use of irradiation in the processing of food, the agency usually considers the effects of lifetime daily exposure to the additive. The requested use, however, is limited to NASA's space flight programs. The amount of irradiated beefsteak that could be consumed by individuals in the programs would constitute an extremely small fraction of their diets when considered over a lifetime. Because of this factor, questions regarding acute hazards, including those resulting from pathogenic organisms that could be present in the food, are more significant than they would ordinarily be in deciding whether to list a food additive. The petition has requested that FDA authorize the use of irradiation processing only under conditions that ensure the microbial sterility of the product and the integrity of the product packaging. NASA has stated that it will ensure these qualities of sterility and of packaging integrity by requiring adherence to an irradiation processing protocol (scheduled process) that it submitted with the petition (Ref. 1).

Having evaluated the data in the petition and other relevant material in its files, FDA tentatively finds that the total amount of radiolytic products that are produced in the beefsteaks during irradiation processing, and that will be consumed by individuals in the space flight programs, will be too small to be of any toxicological significance. Likewise, FDA tentatively finds that the total amount of radiolytic products that could be formed and migrate from the packaging materials to the food during irradiation processing, and then be consumed by individuals in the space flight programs, is too small to be of any toxicological significance (Ref. 2).

Section 179.25(c) (21 CFR 179.25(c)) restricts packaging materials used in the irradiation of packaged foods to those materials listed in § 179.45 (21 CFR 179.45), namely, those that have been demonstrated to be safe for use during irradiation of prepackaged foods, assuming that those foods would be consumed daily over a lifetime span. The agency tentatively finds that this restriction is unnecessary for packaging to be used only in space flight programs. The tentative final regulation set forth below, therefore, waives the requirement in § 179.25(c) that packaging materials be restricted to those listed in § 179.45, provided that the packaging has been judged to be safe for holding food.

III. Tentative Conclusions

The agency tentatively finds that beefsteaks irradiated at a minimum dose of 44 kiloGrays and handled in accordance with the provisions of § 179.25(d) will meet current standards for commercial sterility and nutritional adequacy. The protocol submitted by NASA (Ref. 1) in its petition is an example of a scheduled process that would satisfy the requirements of § 179.25(d). The agency tentatively concludes, therefore, that the proposed use of a source of radiation is safe, and that § 179.26 of the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its tentative decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

IV. References

1. U.S. Army Natick RD&E Center, "Space Food Prototype, Production Guide No. 60–C," April 13, 1993.

2. Memorandum dated June 26, 1990, from L. Borodinsky, FDA, to C. Takeguchi, FDA.

V. Comments

Interested persons may, on or before February 7, 1994, submit to the Dockets Management Branch (address above) written comments regarding this tentative final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 179

Food additives, Food labeling, Food packaging, Radiation protection, Reporting and recordkeeping requirements, Signs and symbols.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that 21 CFR part 179 be amended as follows:

PART 179—IRRADIATION IN THE PRODUCTION, PROCESSING AND HANDLING OF FOOD

1. The authority citation for 21 CFR part 179 continues to read as follows:

Authority: Secs. 201, 402, 403, 409, 703, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 343, 348, 373, 374).

2. Section 179.26 is amended in the table in paragraph (b) by adding a new entry "7." under the headings "Use" and "Limitations" to read as follows:

§ 179.26 Ionizing radiation for the treatment of food.

* * * * *

(b) * * *

Use	Limitations
* * * * *	
7. For the sterilization of frozen, packaged beefsteaks used solely in the National Aeronautics and Space Administration space flight programs..	Minimum dose 44 kGy (4.4 Mrad). Packaging materials used need not comply with § 179.25(c) provided that their use is otherwise permitted by applicable regulations in parts 174 through 186 of this chapter.

* * * * *

Dated: November 24, 1993.

Douglas L. Archer,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93-29905 Filed 12-7-93; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

North Dakota Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of additional revisions pertaining to a previously proposed amendment to the North Dakota permanent regulatory program (hereinafter, the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions for North Dakota's proposed rules pertain to permit denial for delinquent civil penalties. The amendment is intended to revise the North Dakota program to be consistent with the corresponding Federal regulations.

This document sets forth the times and locations that the North Dakota program and proposed amendment to that program are available for public inspection and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., m.s.t., December 23, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the North Dakota program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office; Office of Surface Mining Reclamation and Enforcement; 100 East B Street, room 2128; Casper, WY 82601-1918. Telephone (307) 261-5776.

Edward J. Englerth, Director, Reclamation Division; Public Service Commission; Capitol Building; Bismarck, ND 58505-0165. Telephone (701) 224-4092.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone (307) 261-5776.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program as administered by the Public Service Commission. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program can be found in the December 15, 1980 **Federal Register** (45 FR 82214). Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.15 and 934.16.

II. Submission of Proposed Amendment

By letter dated April 21, 1993 (Administrative Record No. ND-P-01), North Dakota submitted a proposed amendment ("Amendment XVII") to its permanent program pursuant to SMCRA. North Dakota proposed this amendment mostly in response to program amendments required at 30 CFR part 934.16(m), (o), (p), (q), (r), (s), (t), & (v), codified in the January 9, 1992, **Federal Register** (57 FR 827). That is, most of the proposed amendment was intended to change the rules of the North Dakota program to conform to Federal regulation requirements.

The provisions of the North Dakota Administrative Code (NDAC) that North Dakota proposes to amend are: NDAC 69-05.2-06-02(3) [permit applications, compliance information]; NDAC 69-05.2-09-01(4) [permit applications, operations plans, general requirements]; NDAC 69-05.2-10-03(1) [permit applications, criteria for permit approval or denial]; NDAC 69-05.2-13-08(3),(4) [performance standards, protection of fish, wildlife, and related environmental values]; NDAC 69-05.2-16-09(13),(16) [performance standards, sedimentation ponds]; NDAC 69-05.2-20-03(3),(4) [performance standards, coal processing waste impoundments, design and construction]. North Dakota also proposed a few minor editorial revisions, and also one substantive change not in response to required amendments: NDAC 69-05.2-15-04(3) [performance standards, plant growth material, redistribution].

OSM published a notice in the May 19, 1993, **Federal Register** (58 FR 29153) announcing receipt of the amendment and inviting public comment on its adequacy (Administrative Record No. ND-P-7). The public comment period ended June 18, 1993.

During its review of the amendment, OSM identified concerns relating to the provisions of NDAC 69-05.2-10-03(1) regarding permit denial for unpaid civil penalties for certain violations. OSM notified North Dakota of the concerns by letter dated October 6, 1993 (Administrative Record No. ND-P-10). North Dakota responded in a letter dated November 23, 1993, by submitting a revised amendment (Administrative Record No. ND-P-11).

North Dakota proposes additional revisions to NDAC 69-05.2-10-03(1)(a) regarding permit denial for delinquent civil penalties. The proposed revisions would require that the Commission not issue a permit if there are delinquent civil penalties under the North Dakota Century Code sections 38-14.1-32 and 38-12.1-08, SMCRA, or any law or rule in any state enacted under federal law or regulation pertaining to air or water environmental protection, incurred in connection with any surface coal mining and reclamation operation.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed North Dakota program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the North Dakota program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 30, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93-29888 Filed 12-7-93; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 944

Utah Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Utah permanent regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of the Utah backfilling and grading rules pertaining to spoil and waste; refuse piles; previously mined areas, continuously mined areas, and areas subject to the approximate original contour (AOC) requirements; and AOC. The amendment is intended to revise the Utah program to be consistent with the corresponding Federal regulations.

This notice sets forth the times and locations that the Utah program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.s.t. January 7, 1994. If requested, a public hearing on the proposed amendment will be held on January 3, 1994. Requests to present oral testimony at the hearing must be received by 4 p.m., m.s.t. on December 23, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Robert H. Hagen at the address listed below.

Copies of the Utah program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., suite 1200, Albuquerque, NM 87102, Telephone: (505) 766-1486.

Utah Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, suite 350, Salt Lake City, UT 84180-1203, Telephone: (801) 538-5340.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Telephone: (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated November 12, 1993, Utah submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. UT-875). Utah submitted the proposed amendment in response to the required amendment at 944.16 (a), (b), (c), and (d) published in the September 17, 1993, **Federal Register** (58 FR 48600).

Utah proposes to revise Utah Administrative Rule (Utah Admin. R.) 645-301-553.200 by substituting the word "of" for the word "or" with respect to the requirement that "[s]poil and waste materials will be compacted where advisable to ensure stability or to prevent leaching *or* toxic materials" (emphasis added).

Utah proposes to revise Utah Admin. R. 645-301-553.252 concerning refuse piles by adding the phrase "are met" at the end of this paragraph, which would require that "[t]he Division [of Oil, Gas and Mining] may allow less than four feet of cover material [to be placed over a regraded refuse pile] based on physical and chemical analyses which show that the requirements of R645-301-244.200 and R645-301-353 through Utah Admin. R. 645-301-357 *are met*" (emphasis added).

Utah proposes to revise the existing title "[p]revisouly mined areas" of Utah Admin. R. 645-301-553.500 to read "[p]reviously mined areas, continuously mined areas, and areas subject to the approximate original contour requirements."

Utah proposes to revise Utah Admin. R. 645-301-553.520 by requiring that highwalls need not be eliminated for underground mining operations conducted prior to August 3, 1977, and continued after that date.

Utah proposes to revise Utah Admin. R. 645-301-553.523 by (1) clarifying that the stability criteria of proposed Utah Admin R. 645-301-553.523 apply to the AOC criteria at Utah Admin. R. 645-301-553.650 and (2) specifying that a highwall remnant or retained highwall must not pose a hazard to the environment.

Utah proposes to revise Utah Admin. R. 654-301-553.600 and .620 to allow postmining slopes to vary from AOC only when AOC cannot be met, and approval is obtained from the Division for incomplete elimination of highwalls in previously mined areas or continuously mined areas.

Utah proposes to revise Utah Admin. R. 654-301-553.650 to require that, prior to obtaining Utah's approval for the retention of a highwall, the operator will establish and the Division will find in writing that the proposed highwall will achieve the stability requirements of Utah Admin. R. 645-301-553.523 and that the proposed highwall will meet the AOC criteria of Utah Admin. R. 645-301-553.651 through .655.

Utah proposes the following revisions to Utah Admin. R. 645-301-651 that allows the retention of a highwall if "[t]he retained highwall is not [significantly] greater in height than the [dimensions of existing] cliffs [in the surrounding area] *and cliff-like escarpments that were replaced or disturbed by the mining operations*" (brackets and emphasis added). Utah proposes to delete the bracketed language and add the emphasized language.

Utah proposes to revise Utah Admin. R. 645-301-553.652 by stating that the applicability of Utah Admin. R. 645-301-553.651 through 553.655 is such that the standards for AOC apply for any highwall created after December 13, 1982.

Utah proposes to revise Utah Admin. R. 645-301-553.653 by requiring that the retained highwall will be modified if necessary to restore cliff-type habitats required by the flora and fauna existing prior to mining.

Utah proposes to revise Utah Admin. R. 645-301-553.654 by requiring that the retained highwall will be compatible with both the approved postmining land use and the visual attributes of the area.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking

comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Utah program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m., m.s.t. on December 23, 1993. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 1, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93-29889 Filed 12-7-93; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ-23-1-6071; FRL-4811-2]

Approval and Promulgation of Implementation Plans; Arizona—Maricopa Nonattainment Area; Carbon Monoxide

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve, as part of the Arizona State Implementation Plan (SIP), the Maricopa Association of Governments' contingency process for the Maricopa (Phoenix) carbon monoxide (CO) nonattainment area and is also proposing limited approval, as part of the Arizona SIP, of a revision to the wintertime gasoline volatility limit for the Maricopa area. This revision eliminates the 1 pound-per-square-inch allowance for certain ethanol-blended gasolines. Finally, based on the proposed approval of the MAG process, EPA is proposing to withdraw its federal contingency process for the Maricopa area promulgated in February, 1991 and, based on the proposed limited approval of the volatility limit revision, to withdraw the list of highway projects potentially subject to delay that was proposed on June 28, 1993.

DATES: Written comments on this proposal must be submitted by January 7, 1994.

ADDRESSES: Written comments should be sent to: Julia Barrow, Director, Office of Federal Planning, A-1-3, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105.

The rulemaking docket for this notice, Docket No. 93-AZ-MA-2, may be

inspected and copied at the following location between 8 a.m. and 4:30 p.m. on weekdays. A reasonable fee may be charged for copying parts of the docket.

U.S. Environmental Protection Agency, Region 9, Air and Toxics Division, Office of Federal Planning, A–1–3, 75 Hawthorne Street, San Francisco, California 94105.

Copies of the docket are also available at the State and local offices listed below:

Arizona Department of Environmental Quality, Library, 3033 North Central Avenue, Phoenix, Arizona 85012.
Maricopa Association of Governments, 1820 West Washington, Phoenix, Arizona 85007.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, A–5–2, Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1238.

SUPPLEMENTARY INFORMATION:

I. Background

A. 1991 Federal Implementation Plan

On February 11, 1991, EPA disapproved under the Clean Air Act (CAA) portions of the Arizona State Implementation Plan (SIP) and promulgated a limited federal implementation plan (FIP) for the Maricopa and Pima County, Arizona, carbon monoxide (CO) nonattainment areas. EPA disapproved portions of the SIP and promulgated the FIP in response to an order of the Ninth Circuit Court of Appeals in *Delaney* v. *EPA*, 898 F.2d 687 (9th Cir. 1990). For a discussion of *Delaney*, the SIP disapproval, and the FIP, please see the notice of proposed rulemaking (NPRM) for the FIP, 55 FR 41204 (October 10, 1990) and the notice of final rulemaking for the FIP, 56 FR 5458 (February 11, 1991).

The *Delaney* order required EPA to promulgate, as part of the FIP, a two-part contingency process consistent with the Agency's 1982 SIP guidance found at 46 FR 7187, 7192 (January 22, 1981). These two parts were a list of transportation projects that would be delayed while an inadequate SIP was being revised and a procedure to adopt measures to compensate for unanticipated emission reduction shortfalls. Under the 1982 SIP guidance both parts were to be triggered when the EPA Administrator determined that a SIP was inadequate and additional emission reductions were necessary.

The FIP contingency process for the Maricopa area is initially triggered by any violation of the CO national ambient air quality standard (NAAQS) occurring after December 31, 1991. In the FIP, December 31, 1991 was the date after which no further violations of the CO standard were expected to occur in the Maricopa area. In December, 1992, the Phoenix area recorded two violations of the CO standard. In compliance with the FIP contingency procedures, EPA recently published a notice, 58 FR 34547 (June 28, 1993), announcing the violations and, based on air quality modeling, proposing to find that the implementation plan is inadequate and that additional control measures are necessary to attain and maintain the CO NAAQS in the Maricopa area. In the same notice, EPA also proposed an updated list of highway projects subject to delay while the implementation plan is being revised.

B. 1993 State Implementation Plan Revision

On June 23, 1993, the State of Arizona submitted to EPA, as a revision to the Arizona SIP, the Maricopa Association of Governments (MAG) Process and Impact Documentation for Carbon Monoxide Contingency Measures, adopted by the MAG Regional Council on February 24, 1993. This contingency process sets out the steps that MAG will take to revise the Maricopa CO SIP if the Maricopa area fails to make reasonable further progress (RFP) or fails to attain the CO NAAQS.

The MAG process is triggered by a violation of the CO NAAQS occurring any time after December 31, 1991. Within 30 days of a violation, the MAG Air Quality Policy Team—which is comprised of the Directors of the Arizona Department of Environmental Quality and Department of Transportation (ADOT), the Air Pollution Control Officer of Maricopa County, and the MAG Secretary—will determine whether or not the monitoring data were affected by an exceptional event and submit its determination to EPA for consideration. EPA would then have 30 days to review the monitoring data and the MAG Policy Team's determination and make a formal response. The MAG process can also be triggered through a finding by the EPA Administrator that the Maricopa area has failed to demonstrate RFP. In this case, the process does not include the Policy Team or EPA review but rather begins with the steps necessary to revise the SIP.

If EPA determines after reviewing the monitoring data and the MAG Policy Team determination that a violation has occurred or that RFP has not been achieved, MAG would within twelve months take the steps necessary to revise the SIP to assure attainment of the CO NAAQS. These steps include performing air quality modeling to determine the additional emission reductions necessary for attainment, evaluating control measures, holding public hearings, seeking commitments to implement measures from the appropriate agencies, and submitting to EPA through ADEQ the revised SIP. The process also requires MAG to evaluate and adopt new committed contingency measures that will comply with the requirements of the Clean Air Act and that will be implemented in the event of future SIP failures.

On June 23, 1993, the State also submitted to EPA, as a revision to the Arizona SIP, section 1 of Arizona House Bill (H.B.) 2129 which was passed by the State Legislature and approved by the Governor on April 22, 1993. This bill amends Arizona Revised Statutes (A.R.S.) section 41–2122 which allows gasolines blended with at least 7.3 percent ethanol by volume to exceed the 10 psi wintertime limit on gasoline volatility (measured as Reid Vapor Pressure or RVP) by up to 1 psi. A.R.S. section 41–2122 was approved as part of the Arizona SIP on March 9, 1992. See 40 CFR 52.120(c)(68)(i)(A)(1). Section 1 of H.B. 2129 eliminates this wintertime allowance for ethanol-blended gasolines if the EPA Administrator finds that additional control measures are necessary for attainment of the CO NAAQS in the Maricopa nonattainment area, that the area has failed to demonstrate RFP, or that the area has failed to attain the NAAQS for CO by the applicable attainment date. Elimination of the RVP allowance for ethanol-blended gasoline would require all ethanol-blended gasoline sold in the Maricopa area during the winter months to have a RVP of no more than 10 psi. It is important to note that Section 1 of H.B. 2129 does not affect the requirement that gasolines that are blended with an oxygenate other than ethanol have a RVP of no more than 10 psi during the winter months.

Section 1 also allows the use by gasoline manufacturers and suppliers of alternative fuel control measures if they are first approved by the Director of the Arizona Department of Weights and Measures (ADWM) in consultation with the Director of the ADEQ. In order to approve an alternative measure, the Directors must determine that the alternative would result in equal or greater emission reductions than a fuel with a RVP of 10 psi and a minimum oxygen content of 2.7 percent by weight.

The amended A.R.S. 41–222 also requires ADWM, in consultation with ADEQ, to notify all manufacturers and suppliers of gasoline of any change in

the volatility requirement. This notice must be given at least 60 days prior to the beginning of any mandatory oxygenate season. The wintertime oxygenate season begins September 30 of each year.

The 1992/93 market share of ethanol-blended gasoline was 73 percent. Assuming this market-share remains constant, the emission reductions from this measure, if implemented, are estimated to be approximately 4.7 percent of 1993 CO emissions from on-road motor vehicles and 3.3 percent of total 1993 CO emissions.

The MAG contingency process and Section 1 of H.B. 2129 are intended to substitute for the federal contingency process for the Maricopa area contained in the Arizona FIP including the recently-proposed EPA actions under that contingency process. EPA is proposing, to approve as a revision to the Arizona CO implementation plan, the MAG contingency process, to give limited approval to Section 1 of H.B. 2129, to withdraw the list of highway projects subject to delay that was proposed on June 28, 1993 (58 FR 34547) and to withdraw the federal contingency process for the Maricopa area. The Agency, however, is retaining the attainment and maintenance demonstrations and the conformity provisions in the FIP for the Maricopa and Pima CO nonattainment areas as well as the contingency process for the Pima CO nonattainment area. It is also retaining its February 11, 1991 disapproval of the corresponding portions of the Arizona SIP. See 56 FR 5458.

C. Standard for SIP Approval

On receipt of a SIP submittal, EPA must first determine if the submittal is complete under CAA section 110(k)(1)(B) and 40 CFR part 51, appendix V, "Criteria for Determining the Completeness of Plan Submissions." A completeness review allows EPA to determine if the State has followed the administrative requirements set out by the CAA for adoption of State rules for incorporation into the SIP and if all the necessary components have been included in the submittal to allow EPA to properly review and act on the substance of the submittal. EPA has reviewed the SIP submittals proposed for approval in this notice and have found them complete. See the letter from David P. Howekamp, EPA-Region 9 to Edward Z. Fox, Arizona Department of Environmental Quality, July 26, 1993.

Once a SIP submittal is deemed complete, EPA must next determine if the submittal is approvable as a revision to the SIP. EPA's primary responsibility when approving SIP revisions is to ensure that the revisions strengthen or maintain the SIP and are consistent with CAA requirements and EPA policy. CAA section 110(l) states that the "Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement of [the Clean Air] Act." Therefore, before approving any SIP revision, EPA must demonstrate that the revision will not: (1) Delay attainment, (2) interfere with reasonable further progress (RFP), or (3) conflict with the area's compliance with other requirements of the Act as well as ensure that the SIP revision is consistent with applicable CAA requirements and Agency policy.

One test for determining whether a revision to an applicable implementation plan will not delay attainment is to determine if it provides for the equivalent or greater emission reductions than the unrevised plan. One test for determining whether a SIP revision will delay annual progress towards attainment (that is, RFP) is to determine if it provides for emission reductions on the same or faster schedule than the unrevised plan. For today's proposed action, EPA must make these two specific findings in order to substitute the State's contingency process for the federal one.

The final demonstrations required for approving changes to the SIP depend on the revision under consideration. For each revision, the applicable CAA requirements and Agency policies must be identified and the revision reviewed against them to ensure compliance.

For contingency measures, the CAA establishes general requirements for contingency measures in nonattainment areas in section 172(c)(9). In addition to section 172(c)(9), the Clean Air Act also establishes requirements for contingency measures in sections 182(c)(9) (for serious and above ozone nonattainment areas) and 187(a)(3) (for moderate CO areas with design values above 12.7 ppm and for serious CO areas). The Maricopa CO nonattainment area was classified on November 6, 1991 (56 FR 56694) as a moderate area with a design value of 12.7 ppm or less (hereafter referred to as a "low moderate area"). For such areas, section 172(c)(9) establishes the only requirement for contingency measures. Section 172(c)(9) requires implementation plans to:

> Provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under [Part D]. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator.

EPA has provided its preliminary interpretation of the CAA requirement for contingency measures in the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 57 FR 13498, 13510 (for ozone SIPs in general), 13520 (for serious and above ozone areas) and 13532 (for CO areas) (April 16, 1992) (hereafter, the General Preamble). EPA has stated that these new contingency requirements supersede those contained in the 1982 ozone and CO SIP guidance under which the FIP contingency process was promulgated. See General Preamble at 13511 and 13532.

For reasons discussed later in this notice, EPA is not at this time proposing to approve the State contingency measure as fully satisfying the CAA section 172(c)(9) requirement for such measures; therefore, a further discussion of the CAA and EPA policy requirements for contingency measures is not provided here.

For control measures in general, whether contingency measures or not, EPA must assure that their emission reductions are enforceable in order to approve them into the SIP. In addition, for fuel measures intended to control motor vehicle emissions, EPA must make certain findings as required by CAA section 211(c)(4) before it can approve such measures into the SIP. Section 211(c)(4) is discussed in detail later in this proposal.

Neither the CAA nor current EPA policy requires contingency procedures (as distinguished from actual measures) in SIPs. As noted above, the 1982 SIP guidance under which the FIP was promulgated, which required contingency procedures, has been superseded. Approving contingency procedures into SIPs, however, does not generally conflict with other requirements of the CAA or EPA policy.

II. EPA Evaluation of SIP Submittal

1. Compliance With Clean Air Act Requirements and EPA Policy

Section 1 of H.B. 2129 is triggered by an EPA finding that additional control measures are necessary to attain the CO NAAQS in the Maricopa area. EPA has recently completed air quality modeling for the Maricopa area which indicates that substantial additional controls are necessary to attain the CO standard by the CAA section 186(a)(1) deadline of December 31, 1995. This modeling was discussed in a recent **Federal Register**

notice. See 58 FR 34547 (June 28, 1993). Based on this modeling, EPA has made the finding to the State that additional control measures are necessary. See letter from David P. Howekamp, EPA-Region 9, to John U. Hays, Director, Arizona Department of Weights and Measures (ADWM) and Edward Z. Fox, Director, Arizona Department of Environmental Quality (ADEQ), July 19, 1993. On July 23, 1993, ADWM and ADEQ issued the notifications concerning the change in the volatility limit required by Section 1 of H.B. 2129. Under the terms of Section 1 of H.B. 2129, once triggered, the measure is in effect each subsequent oxygenate season and will no longer operate as a contingency measure. Because this measure will be implemented by the time EPA takes final action on this proposal, the measure will no longer be a contingency measure under CAA section 172(c)(9) at the time of approval and therefore cannot be approved as such under that section. Thus, EPA need not evaluate it against the CAA and EPA policy requirements for contingency measures in order to approve it as part of the Arizona SIP.

CAA section 110(a)(2)(A) requires SIPs to include enforceable emission limitations. EPA has reviewed the measure's emission limitation and has found that it contains two elements that potentially affect its enforceability. The first requires the ADWM Director, in consultation with the ADEQ Director, to issue notifications to all gasoline suppliers and manufacturers ("the regulated industry") at least 60 days prior to the beginning of each and every oxygenate season in which the 1 psi allowance for ethanol-blended gasolines is withdrawn. The second element requires the ADWM Director, again in consultation with the ADEQ Director, to grant the use of alternative fuel control measures if he determines that the alternative would result in equal or greater emission reductions than a fuel with a RVP of 10 psi and a minimum oxygen content of 2.7 percent by weight.

As discussed earlier, once triggered this contingency measure will be implemented during the upcoming oxygenate season and in each oxygenate season thereafter. Under the language of H.B. 2191, notification is required before each of these oxygenate seasons. It is not clear whether failure to make this notification provides a defense to the regulated industry if it should sell ethanol-blended gasoline with an RVP greater than 10 psi. Because this uncertainty clouds the enforceability of this measure, EPA proposes to give this measure only limited approval under CAA sections 110(k)(3) and 301(a) as strengthening the SIP but proposes not to allow the State to incorporate the measure into any future attainment or RFP demonstration made under sections 172 or 187 until the State either revises the notification requirement or provides clarification that failure to notify does not prevent enforcement of the measure during any oxygenate season. This clarification should be through an Arizona Attorney General's opinion concluding that failure to notify does not affect the enforceability of the emission limitation in H.B. 2129 should the Attorney General's Office be able to make that conclusion. If the State is able to provide such an opinion prior to EPA taking final action, EPA proposes to fully approve the measure for all purposes under section 110(k)(3).

For the upcoming oxygenate season (1993/94 season), the State has already issued the required notification and therefore the measure's emission reductions will be assured for the 1993/94 season. EPA proposes to substitute the measure for the currently-proposed list of highway projects subject to delay. The equivalency of the potential emission reductions from the measure and from the proposed list of highway is discussed in the following section.

The second element which potentially affects the enforceability of this measure requires the ADWM Director, in consultation with the ADEQ Director, to approve alternative fuel control measures submitted by manufacturers or suppliers of gasoline which the Directors determine will result in motor vehicle carbon monoxide emission reductions that equal or exceed the reductions resulting from a fuel with a RVP of 10 psi and a minimum oxygen content of 2.7 percent by weight. In making this determination, the Directors must compare the alternative fuel measure against the emission reduction which would be obtained from a fuel with the maximum vapor pressure of 10 psi and a minimum oxygen content of 2.7 percent by weight. While H.B. 2129 lays out this explicit test for approving alternative fuel control measures, it does not prescribe how this test is to be performed.

To remedy this deficiency and to assure that any alternative fuel control measure does not lessen the overall stringency of the basic requirement, the State has developed a written protocol and provided this protocol to EPA for review. The protocol (which can be found in the docket for this proposal) contains an explicit and detailed calculation method for determining equivalency between the alternative fuel control measure and a fuel containing 2.7 percent oxygen and having a RVP of 10 psi. This method specifies the mobile source model to be used (MOBILE5a or the latest available, approved EPA mobile source model) and all model inputs not related to fuel specifications (e.g., vehicle inspection program parameters, vehicle fleet specifications, ambient temperatures, and vehicle speeds). The method also pre-qualifies as equivalent the use of gasolines containing at minimum 3.5 percent ethanol by volume and an RVP of no more than 11 psi.

Given this protocol, the availability of alternative fuel control measures no longer clouds the enforceability of this measure and EPA proposes to fully approve this measure under section 110(k)(3) assuming the State corrects or clarifies the notification language.

As stated previously, neither the CAA nor EPA policy establishes a requirement for contingency procedures in SIPs. The Agency, however, will require areas to revise their SIPs within one year of any finding that triggers contingency measure implementation. (See General Preamble at 57 13511 and 13532.) The MAG process requires the submittal of a SIP revision within one year of a finding by EPA that a violation has occurred after December 31, 1991 or that the area has failed to demonstrate RFP. The MAG process, therefore, is consistent with EPA's interpretation of contingency requirements under the CAA with respect to revising SIPs after findings which trigger contingency measures.

2. No Interference With RFP or Attainment

For today's proposed action, EPA must make the findings that neither attainment or progress toward attainment will be delayed in order to substitute the State's contingency process and measure for the federal procedures. One standard for determining if a revision to an applicable implementation plan will not delay annual progress towards attainment is to determine if it provides for emission reductions on the same or faster schedule than the unrevised plan. Likewise, one standard for determining if a revision will not delay attainment is to determine if it provides for the equivalent or greater emissions reductions than the unrevised plan.

The federal contingency process (which was promulgated as part of the Arizona FIP in February, 1991) consists of two elements: a procedure to promulgate measures to compensate for unanticipated emission reduction shortfalls and a list of transportation projects that would be delayed while the additional measures are being

promulgated. EPA is proposing to substitute the MAG contingency process for the entire federal process for the Maricopa area and the State contingency measure for the currently-proposed list of highway projects potentially subject to delay. The Agency believes that these substitutions will not interfere with either RFP or attainment of the CO NAAQS in the Maricopa area.

The FIP contingency process is initially triggered by a violation of the CO standard in the Maricopa area after December 31, 1991. A violation not caused by an exceptional event (as defined by EPA guidelines) requires a determination by the Agency whether additional control measures are necessary to assure maintenance of the CO standard. Upon a finding by the Agency that additional measures are necessary, the process to identify, propose, and promulgate additional measures as well as the delay of highway projects are triggered. Under the FIP contingency process, the Agency has 4 to 6 months from the end of the quarter in which the violation occurred to make the finding and then an additional 10 months from the finding to promulgate all additional measures available to EPA that could correct the emission reduction shortfall.[1] This is a total of a minimum of 14 to 16 months for the entire contingency process from the end of the quarter in which the violation occurred.

The MAG contingency process requires the submittal of a SIP revision within 14 months of a violation of the CO NAAQS occurring after December 31, 1991 and within 12 months of a finding by EPA that a violation has occurred after December 31, 1991. While the MAG process is longer from the EPA finding, the finding occurs at an earlier date and thus the overall process from CO violation to SIP revision is shorter, resulting in a faster correction of any emission reduction shortfall. It should also be noted that the MAG process is initiated from the date of the violation rather than from the end of the quarter when the violation occurs as in the federal process which makes the MAG process even shorter than the federal one in many cases.

The MAG contingency process ends in the submittal, as a SIP revision, of a MAG-adopted plan containing commitments from appropriate agencies to implement control measures. MAG is the designated lead air quality planning agency for the Maricopa area but has no authority under either federal or Arizona state law to independently adopt air quality control measures. In order to implement the air quality plans that it develops, MAG must rely on the adoption and/or implementation of measures by its member jurisdictions (the cities in and the County of Maricopa), appropriate state regulatory agencies, and the Arizona State legislature. As written, the MAG contingency process does not bind the jurisdictions, the state agencies, or the State legislature to adopt all controls necessary to attain the CO NAAQS; therefore, the MAG process may not result in a SIP revision adequate to assure attainment of the CO NAAQS. The federal contingency process, however, does require EPA to adopt all measures available to the Agency which could correct the emission reduction shortfall that prevents attainment. Because of this difference, the MAG contingency process is potentially not equivalent in emission reductions to the federal procedures.

EPA, however, believes that another action triggered through the MAG process reinforces the MAG process sufficiently to make it equivalent in emission reductions to the federal procedure. As part of the MAG contingency process, EPA is obliged to evaluate and, if data support it, to make a finding that the Maricopa area has failed to demonstrate RFP or attain the CO NAAQS. This finding is tantamount to finding that the applicable implementation plan is substantially inadequate to attain or maintain the NAAQS or comply with the Act's requirement for RFP. Under CAA section 110(k)(5), upon making such a finding, the Agency must then require the State to revise its implementation plan as necessary to correct such inadequacies. (This process is referred to as a "SIP call.") This SIP call requires the State, including its subordinate agencies and jurisdictions (where they are the relevant authority), to develop a revision containing all measures necessary to assure timely attainment and RFP. Thus, by invoking a SIP call requiring submission of enforceable measures, the MAG contingency process becomes equivalent to the federal contingency procedure.

Section 110(k)(5) allows EPA to provide the State up to 18 months to revise its SIP from the date of the SIP call. However, EPA has stated in its General Preamble that once contingency measures have been triggered, the Agency would then give a State only one year to submit a SIP revision. (See General Preamble at 13532.) Therefore, this SIP call would not extend the time available to the State to revise its SIP beyond the 12 months already allotted in the MAG contingency process.[2]

In comparing the contingency measure in Section 1 of Arizona H.B. 2129 to the recently-proposed list of highway projects subject to delay, the State measure is clearly preferable to the FIP in both its potential to reduce emissions and the timing of those emission reductions. MAG's analysis of the effect of highway delay indicates that delay of a substantial number of highway projects will actually increase 1995 CO emissions by 1.9 percent. While EPA believes this analysis probably overstates the effect of delaying highway projects, the effect of highway project delay is probably at best neutral in the short-term. The short-term must be the focus here because the purpose of contingency measures is to provide continued progress toward attainment during the year that the SIP is being revised. Compared to this potential to increase emissions in the short-term from the delay of highway projects, the removal of the 1 psi RVP allowance for ethanol-blended gasolines would reduce total CO emissions by 3.3 percent in 1993 immediately upon implementation and by 3.8 in 1995.

Finally, the MAG process also requires the evaluation and adoption of new committed contingency measures to replace those that have been triggered and implemented. These measures are to comply with the requirements of the Clean Air Act Amendments of 1990 and will take effect without any further action by the Administrator of EPA or by the State. In addition, any future SIP call issued by EPA, as a result of triggering the MAG contingency process, would require the State to adopt new contingency measures to replace any triggered measures.[3] In the same manner that the State contingency measure contained in H.B. 2129 is being substituted for the currently-proposed list of highway projects, these future

[1] It should be noted that, except for first deadline (two months from the end of the quarter in which the violation occurred), the subsequent deadlines for actions under the FIP contingency process are tied to the actual date of the preceding action (e.g., sign a final notice four months after publication of the proposal) rather than being tied to the date of the violation.

[2] On August 9, 1993, based on the findings resulting from the federal contingency process, EPA issued a SIP call to the State of Arizona requiring the submittal by July 19, 1994 of a revision to the implementation plan for the Maricopa CO nonattainment area sufficient to ensure attainment of the CO NAAQS by December 31, 1995.

[3] The SIP call of August 9, 1993 did not include a call for these contingency measures because the CAA deadline (November 15, 1993) for submittal of section 172(c)(9) contingency measures had not passed. However, should the State fail to submit contingency measures by that date, EPA will issue a finding of failure to submit the required contingency measures, and thereby establishing a deadline for mandatory imposition of sanctions under section 179.

measures will provide substitutes for any future list of highway projects that may have been developed if the federal contingency process remained in place. Again, EPA believes that such measures would be equivalent because the contingency measures must be designed to provide substantial emission reductions in the short term to be approvable, whereas highway project delays could increase or have no measurable effect on emissions in the short term.

The Agency believes that limited approval of the State contingency measure, full approval of the MAG process, and withdrawal of the federal contingency process and proposed list of highway projects potentially subject to delay will not interfere with either attainment or RFP because the SIP revision either equals or exceeds the federal process in both the potential emission reductions and the timing of those emission reductions.

III. Withdrawal of Federal Process

Based on the proposed approval of the MAG contingency process, EPA is proposing to withdraw the federal contingency process for the Maricopa County CO nonattainment area. Specifically, the Agency is proposing to delete the phrase "After December 31, 1991 for the Maricopa CO nonattainment area or" from the contingency provisions at 56 FR 5470, column 2 (February 11, 1991). This deletion will leave the federal contingency process in place for the Pima County CO nonattainment area. Based on the proposed limited approval of section 1 of H.B. 2129, the Agency also proposes to withdraw the list of highway projects potentially subject to delay that was proposed on June 28, 1993 (58 FR 34547).

EPA is proposing these actions because, with its final approval of the State contingency process, the federal process will become unnecessary for attainment and maintenance of the CO NAAQS in the Maricopa area. To leave the federal process in place would complicate air quality planning within Maricopa County and would be unnecessarily redundant. In addition, giving preference to the State programs is consistent with the Clean Air Act's intent that states have primary responsibility for the control of air pollution within their borders. See CAA sections 101(a)(3) and 107(a).

IV. Finding Under Section 211(c)(4)

CAA section 211(c)(4)(A) prohibits a state from prescribing or attempting to enforce any control or prohibition on any characteristic or component of a fuel or fuel additive for the purposes of motor vehicle emission control,

(i) if the Administrator has found that no control or prohibition of the characteristic or component of a fuel or fuel additive under [subsection (c)(1)] is necessary and has published his finding in the **Federal Register**, or

(ii) if the Administrator has prescribed under [subsection 211(c)(1)] a control or prohibition applicable to such characteristic or component of the fuel or fuel additive unless [the] state prohibition or control is identical to the prohibition or control prescribed by the Administrator.

The Administrator has neither made a finding that RVP limits for ethanol-blended fuels are not necessary nor prescribed a control or prohibition related to the RVP levels of ethanol-blended fuels for the September 30 to March 31 period in the Maricopa area. Under these circumstances, EPA may approve such controls without making the special finding in section 211(c)(4)(C) of the Act.

Even if pre-emption has occurred, however, EPA believes that it can still approve the provisions for limits on gasoline volatility in section 1 of H.B. 2129 because the Agency can make the finding under section 211(c)(4)(C). CAA section 211(c)(4)(C) allows a State to prescribe and enforce, for the purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive only if the SIP contains the control or prohibition. The Administrator may approve such provisions into the SIP only if he finds that the State control or prohibition is necessary to achieve the relevant NAAQS. The Administrator may find that a state control or prohibition is necessary to achieve that standard if no other measures that would bring about timely attainment exist, or if other measures exist that are technically possible to implement, but are unreasonable or impracticable. The Administrator may make a finding of necessity even if the implementation plan for the area does not contain an approved demonstration of timely attainment.

EPA is proposing limited approval of a revision to the wintertime RVP limit for the Maricopa area. This revision constitutes a "control or prohibition respecting the use of a fuel or fuel additive" under section 211(c)(4). A limited approval under CAA sections 110(k)(3) and 301(a) incorporates the measure into the Arizona SIP but prevents the State from assuming emission reductions from this measure in any formal attainment or RFP demonstration intended to comply with CAA sections 172 and 187. EPA is proposing a limited approval because the notification requirement in Section 1 of H.B. 2129 may affect the enforceability of the measure's full emission reductions in oxygenate season beyond the 1993/94 season. However, EPA expects that the State will exercise its duties and authorities under Section 1 of H.B. 2193 and that this measure will result in emission reductions which contribute to attainment of the CO NAAQS in the Maricopa area even if those emission reductions currently cannot be formally incorporated into an attainment demonstration. The formal incorporation of the measure into an attainment demonstration is not necessary for a finding under section 211(d)(4)(C) because the section explicitly states that there need not be an approved demonstration of timely attainment for the Administrator to make the finding that a fuel measure is necessary for attainment.

EPA believes that fuel control measures will be necessary parts of any CO attainment demonstration for the Maricopa area. The Maricopa area is classified as a moderate area. Under the Clean Air Act, moderate areas must demonstrate attainment of the CO NAAQS by December 31, 1995. This deadline is little more than 2 years away and, based on air quality modeling performed by both EPA and the Maricopa Association of Governments, the Maricopa area is facing a substantial shortfall in emission reductions needed for attainment by this deadline.

Carbon monoxide is primarily related to the use of on-road motor vehicles.[4] Controls for on-road motor vehicles generally fall into one of five basic categories: motor vehicle emission controls (i.e., tailpipe controls), vehicle inspection and maintenance programs (I/M), transportation control measures (TCMs), fuel reformulations, and vehicle use prohibitions. Tailpipe controls require vehicle fleet turnover to achieve substantial emission reductions and thus would have limited value between now and the Maricopa area's CAA-mandated attainment date of December 31, 1995. TCMs often have long lead times before they can be implemented and are unlikely to produce emission reductions by themselves large enough to allow for attainment in Maricopa. Finally, vehicle use prohibitions (e.g.,

[4] While only 71 percent of the Maricopa CO inventory is from on-road motor vehicles, the other sources of CO—aircraft, locomotives, small utility engines (lawnmowers, chainsaws, etc.), industrial sources, and fireplaces—are even less amenable to rapidly-implemented controls.

no drive days) are clearly unreasonable and impracticable.

Only fuel measures and vehicle I/M programs are likely to produce substantial emission reductions in the Maricopa area before the attainment deadline of late 1995. EPA evaluated the impact of further enhancements to the Arizona I/M program on future ambient CO concentrations in the Maricopa area.[5] This evaluation indicated that I/M program enhancements equivalent to EPA's enhanced I/M regulation alone would still leave CO levels in the Maricopa area substantially above the standard in late 1995. Thus, EPA believes at this time that fuel measures, such as the one contained in Section 1 of H.B. 2129, will be necessarily in order to attain the CO standard in the Maricopa area by the required CAA date.

EPA, therefore, proposes to find that fuel measures—such as the elimination of the RVP allowance for ethanol-blended gasolines—are necessary to achieve the CO national ambient air quality standard and no other measures exist that by themselves would bring about timely attainment that are technically possible to implement in the timeframe necessary, and that are not unreasonable or impracticable.

V. Regulatory Requirements

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

Limited approvals under sections 110(k)(3) and 301(a) do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a) (2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 22, 1993.

Felicia Marcus,

Regional Administrator.

[FR Doc. 93–29892 Filed 12–7–93; 8:45 am]

BILLING CODE 6560–50–P

[5] See Systems Applications International, Air Quality Modeling of Carbon Monoxide Concentrations in Support of the Federal Implementation Plan for Phoenix, Arizona, Draft Final Report, April 30, 1993.

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40 CFR Part 180

[PP 2E4094/P572; FRL–4743–7]

RIN No. 2070–AC18

Pesticide Tolerance for Metsulfuron Methyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the herbicide metsulfuron methyl and its metabolite in or on the raw agricultural commodity sugarcane. The proposed regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [PP 2E4094/P572], must be received on or before January 7, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (7505W), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 2E4094 to EPA on behalf of the Agricultural Experiment Station of Hawaii. This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose the establishment of a tolerance for residues of metsulfuron methyl (methyl 2-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino] carbonyl]amino] sulfonyl] benzoate) and its metabolite methyl 2-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-4-hydroxybenzoate in or on the raw agricultural commodity sugarcane at 0.05 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include:

1. A 1-year feeding study in dogs fed diets containing 0, 50, 500, or 5,000 ppm with a no-observed-effect level (NOEL) of 50 ppm (equivalent to 1.25 milligrams (mg)/kilogram (kg)/day) based on decreased serum LDH at the 500-ppm dose level.

2. A 2-year feeding/carcinogenicity study in rats fed diets containing 0, 5, 25, 500, or 5,000 ppm with a NOEL for systemic effects of 500 ppm (equivalent to 25 mg/kg/day) based on decreased body weight at the 5,000-ppm dose level. No carcinogenic effects were observed under the conditions of the study.

3. An 18-month carcinogenicity study in mice fed diets containing 0, 5, 25, 500, or 5,000 ppm (equivalent to 0, 0.75, 3.75, 75, or 750 mk/kg/day) with no carcinogenic effects observed under the conditions of the study.

4. A two-generation reproduction study in rats fed diets containing 0, 25, 500 or 5,000 ppm (equivalent to 0, 1.25, 25, or 250 mg/kg/day) with no reproductive or fetotoxic effects observed under the conditions of the study. A maternal NOEL for systemic effects is established at 500 ppm based on decreased weight gain at the highest dose tested.

5. A developmental toxicity study in rats given gavage doses of 0, 40, 250, and 1,000 mg/kg/day with no developmental or fetal toxicity observed under the conditions of the study.

6. A developmental toxicity study in rabbits given gavage doses of 0, 25, 100, 300, or 700 mg/kg/day with no developmental or fetal toxicity observed under the conditions of the study. A maternal NOEL was established at 25 mg/kg/day based on decreased body weight and death.

7. Metsulfuron methyl did not induce gene mutation in bacteria cells (Ames test). The chemical did cause chromosomal aberrations in Chinese hamster chromosomes, with and without activation, but was negative for chromosomal aberrations in a mouse micronucleus assay. Metsulfuron methyl tested negative for genotoxic effects in an unscheduled DNA synthesis assay (rat).

8. A metabolism study in rats demonstrates that metsulfuron methyl is rapidly excreted in urine, primarily as the parent compound.

A reference dose (RfD) of 0.25 mg/kg/day is established for metsulfuron methyl based on the NOEL of 25 mg/kg/day from the 2-year feeding study in rats and a 100-fold uncertainty factor. The theoretical maximum residue contribution (TMRC) from published tolerances utilizes 0.3 percent of the RfD for the general U.S. population. The proposed use on sugarcane would utilize an additional 0.01 percent of the RfD. The TMRC for the subpopulation most highly exposed, nonnursing infants (less than 1-year old), utilizes 1.5 percent of the RfD based on published and proposed uses of metsulfuron methyl.

The nature of the residue in sugarcane is adequately understood, and an adequate analytical method, liquid chromatography, is available for enforcement purposes. An analytical method for enforcing this tolerance has been published in the Pesticide Analytical Manual (PAM), Vol. II. Established tolerances are adequate to cover secondary residues resulting from the use of sugarcane and sugarcane byproducts as livestock feed commodities. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency the tolerance established by amending 40 CFR 180.428 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 2E4094/P572]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e, Regulatory Impact Analysis, reveiw by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 24, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.428, paragraph (a) table is amended by adding and alphabetically inserting the raw agricultural commodity sugarcane, to read as follows:

§ 180.428 Metsulfuron methyl; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Sugarcane	0.05
* * * * *	

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[FR Doc. 93-29831 Filed 12-7-93; 8:45 am]
BILLING CODE 6560-50-F

[OPP-300314; FRL-4744-5]

40 CFR Part 180

Arthropod Pheromones; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of arthropod pheromones resulting from the use of these substances in solid matrix dispensers with an annual application limitation of 150 grams active ingredient per acre (gm ai/acre) for pest control in or on all raw agricultural commodities (RAC). This regulation is proposed by EPA at its own initiative.

DATES: Comments identified by the docket number [OPP-300314] must be received on or before January 7, 1994.

ADDRESSES: Submit written comments by mail to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Public Docket, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1128 at the above address, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phil Hutton, Product Manager (PM-18), Registration Division (7505C) Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-7690.

SUPPLEMENTARY INFORMATION: EPA proposes to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for all arthropod pheromones used in solid matrix dispensers at rates less than or equal to 150 grams active ingredient (ai)/acre/year.

A pheromone is defined by EPA as a compound produced by an arthropod that modifies the behavior of other individuals of the same species (40 CFR 152.25(b)(1)). EPA has examined the data related to human health submitted for the approximately 30 arthropod pheromones registered to date as biochemical pesticides as well as available published toxicology studies on this class of compounds. The mammalian toxicology for these registered arthropod pheromones indicates no acute toxicity for the oral route of exposure (toxicity category IV = nontoxic). The compounds tested were shown not to be mutagens via the Ames Salmonella test.

Since registration of approximately 30 arthropod pheromones as active ingredients, the Agency has received no additional factual information regarding unreasonable adverse effects on human health or the environment relating to use of these pesticides. In addition the Agency is unaware of any adverse health or environmental effects resulting from pheromones when used in traps.

To date the Agency has not requested residue analyses for these compounds due to their low mammalian toxicity and use rates, which are generally below the 20 gm ai/acre limit triggering food residue analysis (40 CFR 158.690(b)). In addition, the low probability of redeposition of the pesticide onto the plant after volatilization would predict that food or feed residues are not detectable at these use rates. There is published information for residue analysis of pheromones applied at 129 to 141 gm ai/acre which reported that residues were not detectable in harvested fruit using techniques with a detection limit of 2 to 5 parts per billion (Refs. 1 and 2). The Agency therefore believes that an upper limit of 150 grams ai/acre/year for pheromones in dispensers should result in no detectable residues in or on foods or feed. Broadcast methods of application are not included in this exemption because the Agency does not have sufficient information on the levels of exposure from pheromones which are broadcast.

EPA has determined that, when used in accordance with good agricultural practices, a tolerance is not necessary to protect the public health due to low toxicity and negligible to non-existent food residues expected from the use of these volatile pheromones in solid matrices. Solid matrix dispensers, as defined in this notice, include, but are not limited to: Rubber septa dispensers, trilaminate sheets, tapes, tags, wafers, macrocapillary devices, such as long tubes or fibers, twist ties, or protected ropes which are placed by hand in the field and are of such size and construction that they are readily recognized. Formulations not included in this exemption are: Liquid flowables, microcapsules, microcapillary straws; granular powder, flakes, or confetti formulations which are sprayed or broadcast over the crop area; and cigarette filters or unprotected ropes which generally contain the active ingredient on the outer surface of the unit. These smaller sized formulations are not exempt because they may be of a size and shape readily consumed by birds and other wildlife. A generic exemption for this low-risk, low-exposure group of substances will facilitate the use of semiochemicals as alternatives to conventional synthetic pesticides. Therefore, EPA proposes that an exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after the publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA).

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300314]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this notice from the requirement of review pursuant to Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

References

(1) Spittler, T. D.; Leichtweis, H. C.; Dennehy, T. J. (1988) Biorational Control of Crop Pests by Mating Disruption: Residue Analyses of Z-9-Dodecen-1-yl Acetate and Z-11-Tetradecen-1-yl Acetate in Grapes. In: Biotechnology for Crop Protection, P. Hedin, J. J. Menn and R. Hollingworth (eds), ACS Symposium Series, 379:430–436.

(2) Spittler, T. D.; Leichtweis, H. C.; Kirsch, P. (1992) Exposure, Fate and Potential Residues in Food of Applied Lepidopteran Pheromones. In: Insect Pheromones and Other Behaviour-Modifying Chemicals: Application and Regulation, R. L. Ridgway, M. Inscoe and H. Arn (eds), BCPC Monograph No. 51, pp. 93–108.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 17, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding new § 180.1124 to subpart D to read as follows:

§ 180.1124 Arthropod pheromones; exemption from the requirement of a tolerance.

Arthropod pheromones, as described in 152.25(b) of this chapter, when used in solid matrix dispensers are exempt from the requirement of a tolerance in or on all raw agricultural commodities when applied to growing crops only at a rate not to exceed 150 grams active ingredient/acre/year in accordance with good agricultural practices.

[FR Doc. 93–29829 Filed 12–7–93; 8:45 am]
BILLING CODE 6560–50–F

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40 CFR Part 300

[FRL–4811–8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Ringwood Mines/Landfill Site from the National Priorities List: Request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces its intent to delete the Ringwood Mines/Landfill Site (Site) from the National Priorities List (NPL) and requests public comments on this action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New Jersey have determined that no further cleanup by responsible parties is appropriate under CERCLA. Moreover, EPA and the State have determined that CERCLA activities conducted at the Site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning this Site may be submitted until January 7, 1994.

ADDRESSES: Comments may be mailed to: George Pavlou, Acting Director, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, rm. 737, New York, New York, 10278.

FOR FURTHER INFORMATION CONTACT: Mr. Lance R. Richman, P.G., Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, rm. 13100, New York, New York 10278, (212) 264–6695.

Comprehensive information on this Site is available through the EPA Region II public docket, which is located at EPA's Region II office and is available for viewing, by appointment only, from 9 a.m. to 5 p.m., Monday through Friday, excluding holidays. Requests for appointments to view this information in the Regional public docket should be directed to Mr. Lance R. Richman, P.G.

Background information from the Regional public docket is also available for viewing at the Site's Administrative Record depository located at: Ringwood Library, 145 Skylands Road, Ringwood, New Jersey 07456, (201) 962–6256.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Environmental Protection Agency (EPA) Region II announces its intent to delete the Ringwood Mines/Landfill Site (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the Site warrant such action.

EPA will accept comments concerning this Site for thirty (30) days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the criteria have been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

III. Deletion Procedures

The NCP provides that EPA shall not delete a site from the NPL until the state in which the release was located has concurred, and the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site

from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist Agency management.

EPA Region II will accept and evaluate public comments before making a final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be most pertinent to deletion decisions. The following procedures were used for the intended deletion of the Site:

1. On September 29, 1988, EPA Region II executed a Record of Decision (ROD) which states that there is no identifiable ground-water contaminant plume at the Site, and contamination is not entering the surface waters which drain the Site. However, a long-term ground-water and surface-water monitoring program was initiated as described in the ROD. The State concurred with the ROD.

2. EPA Region II has subsequently recommended deletion of the Site. The State of New Jersey, in its letter of July 23, 1993, has concurred with this recommendation. EPA Region II has made all relevant documents available in the Regional office and local site information repository.

3. Concurrent with this National Notice of Intent to Delete, a local notice has been published in local newspapers and has been distributed to appropriate federal, state and local officials, and other interested parties. This local comment announces a thirty (30) day public comment period on the deletion.

The comments received during the comment period will be evaluated before any final decision is made. EPA Region II will prepare a Responsiveness Summary which will address the comments received during the public comment period.

The deletion process will be completed upon the EPA Region II Regional Administrator placing a notice in the **Federal Register**. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region II.

IV. Basis for Intended Site Deletion

The Site consists of approximately 500 acres in a historic mining district in the Borough of Ringwood, which is located in the northeast corner of Passaic County, New Jersey. The Ringwood Mines are a series of iron ore mines that operated almost continuously from the mid-1700s to the early 1900s. In 1965, Ringwood Realty Company, a wholly-owned subsidiary of the Ford Motor Company (Ford), obtained control of the Site property. Beginning in 1967 and until the mid-1970s, Ringwood Realty used the Site to deposit waste products from the Ford factory in Mahwah, New Jersey. The waste products included car parts, solvents and paint sludge. Some of these wastes were deposited on the ground surface in natural and man-made depressions, and some were allegedly dumped into the mine shafts.

Pursuant to a March 1984 Section 3013 Resource Conservation and Recovery Act (RCRA) Administrative Order on Consent between EPA and Ford, Woodward-Clyde Consultants was retained to perform the field studies and conduct a Remedial Investigation (RI). The RI was conducted in four phases between March 1984 and April 1988 under EPA oversight. Six different media were sampled during the RI: seep water, soils (paint sludge waste), overburden (upper aquifer) ground water, deep bedrock ground water, surface water and stream sediments. Results were as follows:

A ground-water contaminant plume was not identified for any of the contaminants found in any areas at the Site. Ground-water contamination occurred at a low level, and was scattered and generally confined to paint sludge locations.

No detectable migration of ground-water contamination was identified.

Three rounds of surface water samples were collected along with seep water samples. No significant contamination was found.

Arsenic was found in stream sediment samples from Park Brook and Peters Mine Brook. The highest concentration found was 31 parts per million (ppm). Arsenic concentrations as high as 13.5 ppm were found in upstream samples.

Paint sludge waste was identified at four locations at the Site. The paint sludge was sampled and analyzed to determine a waste classification. The paint sludge was identified as EP (extraction procedure) toxic for lead.

Beginning in October of 1987, Ford and its contractors (in accordance with an EPA approved work plan) excavated and removed 7,000 cubic yards of surficial paint sludge containing lead and arsenic from four areas at the Site under an Administrative Order issued by EPA in June of 1987. The paint sludge was disposed of at an out-of-state facility in compliance with State and Federal regulations.

The Record of Decision for the Site was signed by the Acting Regional Administrator of Region II, William J. Muszynski, P.E., on September 29, 1988. EPA's selected remedy for this Site had three components:

1. Achieving health-based levels, including State and Federal Maximum Contaminant Levels (MCLs), in the upper aquifer of the Site through natural attenuation processes. Remediation of ground-water contamination was evaluated and rejected in the ROD since extraction of the ground-water would have diluted levels to below treatment standards. The low levels and sporadic occurrence of ground-water contamination make ground-water treatment impractical. In addition, since the paint sludge removal has eliminated the suspected source of surficial ground-water contamination, ground-water quality should improve without further remediation.

2. Implementing a long-term surface-water and ground-water monitoring program to confirm that ground-water contamination meets or is below health-based levels and to protect against future threats to the ground water and surface water throughout the Site.

3. Performing confirmatory test pitting and soil sampling, along with possible removal of contaminated soils or sludge.

In October of 1989, additional paint sludge was uncovered in the southern section of the O'Connor Disposal Area within the Site. During the excavation of this additional paint sludge which began in January of 1990, a total of sixty-one (61) drums were discovered, some which contained liquid and solid waste. Approximately twenty (20) 55-gallon drums of liquid and solid waste were removed and disposed of off the Site. Seventeen (17) one cubic yard pelletized containers which contained excavated drums and their contents, three drums containing residual materials associated with the Site, and seven hundred and twenty-seven (727) tons of additional paint sludge were also disposed of off the Site. Further geophysical surveys and test pit work were conducted in the O'Connor Disposal Area in 1992 and 1993. No further barrels of hazardous substances were discovered.

Ford, under EPA oversight, has been implementing the Environmental Monitoring Program (EMP) which is a five year program that is being conducted pursuant to an EPA Administrative Order on Consent executed on August 29, 1989. The first two and one-half years of the EMP have been completed.

After the five year EMP, EPA will reevaluate the monitoring results to ensure that ground-water continues to pose no further threat to human health or the environment. Dependent upon this reevaluation, long-term monitoring

of the ground water may continue for a period of up to thirty years. Presently, the shallow aquifer is not being used as a potable water source. State restrictions on shallow wells should remain in effect for the foreseeable future.

All the requirements for the deletion of this Site from the NPL have been met.

Post-excavation confirmatory sampling has verified that all removal action criteria for the removal of paint sludge were met.

Extensive geophysical studies along with exploratory test pitting operations did not uncover any further contaminated soils/sludge, or barrels of hazardous substances at the Site.

A conservative assessment of risk attributable to the release of hazardous substances from the Site indicated that the current risk posed by the Site is within an acceptable range.

A long-term monitoring program has been implemented which provides further assurance that the Site no longer poses any threats to human health or the environment.

The State of New Jersey, in its letter of July 23, 1993, concurred on the deletion of this Site from the NPL.

Dated: November 3, 1993.

Kathleen C. Callahan,

Acting Regional Administrator, USEPA Region II.

[FR Doc. 93-29923 Filed 12-7-93; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 76

[ET Docket No. 93-7; FCC 93-495]

Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992; Compatibility Between Cable Systems and Consumer Electronics Equipment

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing rules to address compatibility between consumer electronics equipment and cable systems, as required by the Section 17 of the Cable Television Consumer Protection and Competition Act of 1992. The proposed rules are intended to ensure compatibility between consumer equipment and cable systems, consistent with the need to prevent theft of cable service, so that cable subscribers will be able to enjoy the full benefits of both the programming available on cable systems and the functions available on their television receivers and video cassette recorders (VCRs).

DATES: Comments must be submitted on or before January 10, 1994, and reply comments on or before January 25, 1994.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell (202-653-8162) or Julius Knapp (301-725-1585), Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in ET Docket No. 93-7, FCC 93-495, adopted January 14, 1993 and released December 1, 1993. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplicating contractor, International Transcriptions Service, 2100 M Street, NW., Washington, DC 20036, (202) 857-3800.

Summary of the Notice of Proposed Rule Making

1. Section 17 of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act) requires that the Commission issue regulations to ensure compatibility between consumer equipment and cable systems. The goal of Section 17 is to ensure that cable subscribers will be able to enjoy the full benefits and functions of their television receivers and VCRs when receiving cable service.

2. Problems between cable systems and consumer TV equipment generally tend to arise from conflicts between new features in consumer television equipment and the techniques used by cable systems to address security and other technical operating considerations. Examples of TV receiver features affected by cable operating methods and devices include functions that permit the subscriber:

—To watch a program on one channel while simultaneously recording a program on another channel;
—To record two programs that appear on different channels; or,
—To use advanced features such as picture in picture.

3. The rules proposed by the Commission are based on the findings and recommendations in its recent "Report to Congress on Means for Assuring Compatibility Between Cable Systems and Consumer Electronics Equipment." These proposals include measures that are intended to provide a significant degree of improved compatibility between existing cable and consumer equipment and also include provisions for achieving more substantial improvements in compatibility through the introduction of new cable and consumer electronics equipment. The proposed rules reflect the requirements for regulations specified in Section 17 and also include many elements of the plan suggested by the Cable-Consumer Advisory Group, a committee of representatives of the cable television and consumer electronics industries.

4. The Commission's proposals for near term improvement include requirements for cable systems to:

—Provide subscribers with supplementary equipment such as converters with multiple descramblers and by-pass switches to enable simultaneous reception of multiple channels.
—Refrain from scrambling signals on the basic tier.
—Provide subscribers a consumer education program on how to achieve greater compatibility with cable service. The consumer education program would also include a notification regarding the availability of remote control units from local retailers.

5. The Commission stated that it believes the most practical solution for ensuring compatibility between scrambling technologies and the special features of consumer equipment is to require use of an updated "Decoder Interface" connector and associated component descrambler unit. Under this approach, new cable ready TV receivers and VCRs would be equipped with a special plug connection that would allow use of a component descrambler to process cable signals after they pass through the tuner of the host devices, thus avoiding the need for a set-top box. The component descrambler units would be provided by cable systems at no separate charge to subscribers.

6. While the Commission is proposing the supplemental equipment and decoder interface as the most practical solution in this matter, it nonetheless believes the most desirable solution in this matter is for cable systems to use technologies that provide all authorized signals in the clear. The Commission therefore stated that it intends to continue to encourage the use and development of cable signal delivery methods such as traps, interdiction,

addressable filters and other clear channel delivery systems that eliminate the need for any additional equipment in the subscriber's premises. The staff believes that the most desirable approach is for cable systems to use technologies that provide all authorized signals in the clear.

7. Finally, in order to avoid compatibility problems when digital cable technology are introduced in the future, the Commission stated that it will closely monitor and encourage industry standardization efforts in the area of digital cable transmission methods.

8. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 CFR sections 1.415 and 1.419, interested parties may file comments on or before January 10, 1994, and reply comments on or before January 25, 1994. All relevant and timely comments will be considered by the Commission before taking further action in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comment and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

List of Subjects

47 CFR Part 15

Communications equipment, Television receivers, TV interface devices.

47 CFR Part 76

Cable television.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 93–29899 Filed 12–7–93; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 58, No. 234
Wednesday, December 8, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Grays Range Timber Sale; Caribou National Forest, Caribou County, ID; Intent To Prepare Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to document the analysis and disclose the environmental impacts of proposed actions to salvage and harvest timber, build roads, and regenerate new stands of trees in the Grays Range area. The project area is located approximately 12 air miles northeast of Soda Springs, Idaho. The proposed actions are located entirely within the 27,500 acre Grays Range area. The need for the proposal is established by the silvicultural condition of the affected timber stands and forest harvest goals as outlined in the Caribou National Forest Land and Resource Management Plan.

The Soda Springs Ranger District of the Caribou National Forest proposes harvesting an estimated 7 million board feet from approximately 1100 acres, using salvage, sanitation, shelterwood, seed tree, and clearcut silvicultural prescriptions. The proposed sale may involve up to seventy timber stands in the salvage of dead and dying Douglas-fir trees and in the harvest of green trees of all species. Harvest unit size will vary from approximately 2 acres to 60 acres. Harvest systems will include both tractor and cable logging. Approximately 6 miles of new temporary road would be required.

DATES: Written comments concerning the scope of the analysis described in this Notice should be received on or before January 7, 1994.

ADDRESSES: Send written comments to Caribou National Forest, Soda Springs Ranger District, 421 West 2nd. South, Soda Springs, Idaho 83276.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be directed to Greg Clark, Forester, Caribou National Forest, Soda Springs Ranger District, phone: (208) 547–4356.

SUPPLEMENTARY INFORMATION: This EIS will tier to the final EIS for the Caribou National Forest Land and Resource Management Plan (Forest Plan). The Caribou Forest Plan provides the overall guidance (Goals, Objectives, Standards, and Management Area direction) to achieve the Desired Future Condition for the area being analyzed, and contains specific management area prescriptions for the entire Forest. The specific objectives of this proposal are:

- To improve forest health by increasing the resistance of timber stands to insects, disease, and stand replacement wildfire within the Gravel Creek, Olsen Creek, Daves Creek, and Sheep Creek drainages.
- To increase the growth and yield by creating diverse stand structures in the Gravel Creek, Olsen Creek, Daves Creek, and Sheep Creek drainages, and
- To provide timber harvest from suited timber lands in the Gravel Creek, Olsen Creek, Daves Creek, Sheep Creek, and Angus Creek drainages to contribute to the Forest's ASQ.

The timber stands in the analysis area are covered by four management prescriptions: Timber Management, Non-intensive Timber Management, Non-intensive Management, Water Management.

For a detailed description of the management prescriptions refer to the Caribou National Forest Land and Resource Management Plan pages through IV–3 through IV–48.

Public scoping for this proposal was first completed in 1990. As a result of additional scoping in 1992, during the selection of issues to be analyzed in depth, and in the development of alternatives, the Caribou National Forest concluded that the proposal may have a significant effect on several resources and decided to prepare this EIS. The previous scoping and analysis also identified the following potential issues related to the proposed action:

Issues/Concerns

1. *Forest Health.* The area continues to suffer from a variety of insect and disease problems, resulting in extensive mortality. Under the proposed action of timber harvest and management; how will forest health be affected? Forest plan direction indicates the need to move towards a desired future condition that includes a reduction in insect and disease activity.
2. *Water quality.* The desired condition is to maintain current water quality. The issue is can we maintain water quality on the Forest implementing this proposal?
3. *Wildlife.* What will be the effects of timber harvest and management on the needs of wildlife in regards to habitat quality, quantity, and security?
4. *Visuals.* How can visual quality best be maintained in that portion of Grays Range visible from State Highway 34 (Bear Lake-Caribou Scenic Byway) and the community of Wayan, Idaho?
5. *Cumulative effects.* Given the past harvest and mineral activities in the Grays Range area, what will be the cumulative effect of additional timber harvest and management?

The Forest Service is seeking information and comments from Federal, State and local agencies as well as individuals and organizations who may be interested in, or affected by, the proposed action. The Soda Springs Ranger District started an environmental analysis in the fall of 1992 and found a need to prepare an Environmental Impact Statement based on potential cumulative effects. The Forest Service invites written comments and suggestions on the issues related to the proposal and the area being analyzed. Information received will be used in preparation of the Draft EIS and Final EIS. For most effective use, comments should be submitted to the Forest Service within 30 days from the date of publication of this Notice in the **Federal Register**.

Preparation of the EIS will include the following steps.

1. Define the purpose of and need for action.
2. Identify potential issues.
3. Eliminate issues of minor importance or those that have been covered by previous and relevant environmental analysis.
4. Select issues to be analyzed in depth.

5. Identify reasonable alternatives to the proposed action.
6. Describe the affected environment.
7. Identify the potential environmental effects of the alternatives.

Steps 2, 3, and 4 have started and will be completed through the scoping process.

Step 5 will consider a range of alternatives developed from the key issues. Five alternatives have been drafted to date.

Alternative 1 was created to salvage dead and dying timber only. This alternative was created to address Forest Health and water quality issues.

Alternative 2 was created to salvage dead and dying timber and harvests high risk stands (those stands susceptible to insect and disease for various reasons). This alternative was developed to address Forest Health and continues to provide timber harvest at the Forest Plan Allowable Sale Quantity level.

Alternative 3 was created to salvage dead and dying timber only and restricts the activities to a smaller area for wildlife security.

Alternative 4 is the proposed action.

Alternative 5 is No Action.

Step 6 will describe the physical attributes of the area to be affected by this proposal, with special attention to the environmental factors that could be adversely affected.

Step 7 will analyze the environmental effects of each alternative. This analysis will be consistent with management direction outlined in the Forest Plan. The direct, indirect, and cumulative effects of each alternative will be analyzed and documented. In addition, the site specific mitigation measures for each alternative will be identified and the effectiveness of these mitigation measures will be disclosed.

The approximate boundary of the area used for this analysis will be that portion of the Soda Springs Ranger District including Grays Range, Rasmussen Ridge, and Wooley Range that is directly north of the Blackfoot River Narrows (Forest Road #095). For a map please contact the Soda Springs Ranger District, 421 West 2nd. South, Soda Springs, Idaho 83276. (208) 547–4356.

The proposed management activities would be administered by the Soda Springs Ranger District of the Caribou National Forest in Caribou County, Idaho.

Agency representatives and other interested people are invited to visit with Forest Service officials at any time during the EIS process. Two specific time periods are identified for the receipt of formal comments on the analysis. The two comment periods are: (1) During the scoping process (the next 30 days following publication of this Notice in the **Federal Register**) and, (2) during the formal review period of the Draft EIS.

The Draft EIS is estimated to be filed with the Environmental Protection Agency (EPA) and available for public review in March 1994. At that time the EPA will publish an availability notice of the Draft EIS in the **Federal Register.**

The comment period on the Draft EIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.** It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the Draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (See The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel,* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

To assist the Forest Service in identifying and considering issues and concerns related to the proposed action, comments on the Draft EIS should be as specific as possible. Referring to specific pages or chapters of the Draft EIS is most helpful. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act, 40 CFR 1503.3, in addressing these points.)

The final EIS is expected to be released August, 1994.

The Forest Supervisor for the Caribou National Forest, who is the responsible official for the EIS, will then make a decision regarding this proposal, after considering the comments, responses, and environmental consequences discussed in the Final Environmental Impact Statement, and applicable laws, regulations, and policies. The reasons for the decision will be documented in a Record of Decision.

Dated: November 29, 1993.

Paul R. Nordwall,

Forest Supervisor, Caribou National Forest.

[FR Doc. 93–29882 Filed 12–7–93; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Mosher-Anderson Creeks Watershed, Fond du Lac County, WI

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Soil Conservation Service Regulations (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Mosher-Anderson Creeks Watershed, Fond du Lac County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Earl Cosby, State Conservationist, Soil Conservation Service, 6515 Watts Road, suite 200, Madison, Wisconsin 53719–2726, telephone (608) 264–5577.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Earl Cosby, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is flood control. The planned works of improvement include one off-channel detention basin, 2,200 feet of diversion, one trash rack, and two stormwater management ordinances.

The Notice of a Finding of No Significant Impact (FONSI) has been

forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Sheryl B. Paczwa.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials)

Earl Cosby,

State Conservationist.

[FR Doc. 93-29901 Filed 12-7-93; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. AB-3-89]

Administrative Appeal Decision and Order

Summary

In the matter of: Martin Brothers International, respondent.

Pursuant to the September 9, 1992 Supplement to Decision and Order of the Administrative Law Judge (ALJ) (which is attached hereto), as modified by this order, Martin Brothers International, Inc. is hereby assessed a civil penalty of $75,000 based on 15 violations of the antiboycott laws, and is hereby denied all privileges of participating in any transaction involving commodities or technical data exported from the United States to Middle East destinations for a period of one year from the date of this order, such denial to be suspended commencing 60 days from the date of this order, provided that Respondent has committed no further violations of the Export Administration Act, the Export Administration Regulations, or this order.

Discussion

The ALJ's November 27, 1991 Decision and Order reduced the number of charges against Martin Brothers International based on a conclusion that, as a matter of law, the proper unit of prosecution under 15 CFR 769.2(d) is each transmission which contains prohibited information, rather than each item of prohibited information within a transmission. This order reverses the ALJ's conclusion of law concerning the proper unit of prosecution. However, the ALJ's reduction of charges under § 769.2(d) in this particular case is affirmed, as a matter of agency discretion.

The ALJ's January 14, 1991 Ruling on the Motions, Parts I and II, found that Martin Brothers International committed 13 violations of the antiboycott provisions of the export regulations. However, the Conclusion section of the Ruling on the Motions mistakenly counts only 11 total violations. The November 27, 1991 Decision and Order and the September 9, 1992 Supplement imposed a penalty of $65,000 based on the "11" violations found in the January 14, 1991 Ruling on the Motions plus two additional violations found in the November 27, 1991 Decision and Order, for a total of 13 violations. The ALJ's finding of 13 total violations is modified, from 13 to 15 total violations, to account for the two violations which were mistakenly omitted from the ALJ's calculations. Accordingly, the penalty is modified to increase the penalty by $5,000 for each of these two omitted violations, for a total increase of $10,000, and a total penalty of $75,000.

Order

On September 9, 1992, the ALJ entered his Supplement to Decision and Order of November 27, 1991 in the above-referenced matter. On October 9, 1992, the Department appealed the ALJ's September 9, 1992 decision. Having examined the record and based on the facts in these cases, I hereby modify the September 9, 1992 Supplement to Decision and Order of the ALJ, attached hereto, by substituting for Part I. of the Order the following provision:

"I. Respondent Martin Brothers International, Inc., is assessed a civil penalty of $75,000."

With this modification, I hereby affirm the September 9, 1992 Supplement to Decision and Order.

Dated: November 30, 1993.

Barry E. Carter,

Acting Under Secretary for Export Administration.

Respondent: Lesley Goldberg, Esq., Hall, McNicol, Hamilton & Clark, 220 East 42nd St.—16th Floor, New York, New York 10017.

Appearance for Agency: Anthony K. Hicks, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Suite H-3839, 14th & Constitution Avenue, NW., Washington, DC 20230.

Supplement to Decision & Order of November 27, 1991

In response to the Respondents request for modifications:

(1) The geographic scope of the Order is limited to Middle East destinations.

(2) The address of the Respondent is changed to reflect the move from New York City to Jacksonville, Florida.

(3) Paragraph V of the Order is noted as not imposing restrictions upon American Maize Swisher, or Helme.

(4) The request to modify the Order with respect to receipt and forwarding orders or providing information is denied. The usual restrictions including interpretation and exceptions will apply.

(5) Participants shall not include Receipt of Payment for Commodities delivered to a vessel for shipment overseas prior to the date of the commencement of any period of denial.

(6) The Employment of Respondents officers or employees by other corporate or business entities including American-Maize Swisher, or Helme is not enjoined. However, those individuals may not engage in export activity which, but for the Denial Order, would have been performed by Martin Brothers International.

Order

The Order of November 27, 1991 is modified: (1) to substitute the address: 459 East 16th Street, Jacksonville, Florida 32203 for the New York address in Par II

(2) To add the words

"to Middle East destinations," after "exported," in the penultimate line of II and to add a footnote "The term Middle East relates to those nations which engage in and support the boycott of Israel."

(3) A footnote is added to V:

This Order does not impose export restrictions upon the separate corporate entities of Jno. H. Swisher & Son, Inc., American Maize-Products or Helme Tobacco Company.

The following is substituted for the Order in the November 27, 1991 issuance:

Order

I. Respondent Martin Brothers International, Inc. is assessed a civil penalty of $65,000.

II. For a period of one year[1] from the date of the final Agency action, Respondent

[1] MBI cites the OAC draft guidelines for penalty and denial period determination. The Agency states

Continued

Martin Brothers International, Inc., 459 East 16th Street, Jacksonville, Florida 32203, and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, to Middle East destinations,[2] or that are otherwise subject to the Regulations to such destinations.

III. Commencing 60 days from the date that this Order becomes effective, the denial of export privileges set forth above shall be suspended, in accordance with Section 788.16 of the Regulations, for the remainder of the one-year period set forth in Paragraph II above, and shall be terminated at the end of such one-year period, provided that Respondent has committed no further violations of the Act; the Regulations, or the final Order entered in this proceeding.

IV. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation.

(i) as a party or as a representative of a party to a validated or general export license application;

(ii) in preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) in obtaining or using any validated or general export license or other export control document;

(iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) in the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

V. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.[3]

VI. All outstanding individual validated export licenses in which Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

VII. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States. The provisions of this paragraph will also be suspended during the remainder of the one-year denial period.

Dated: September 9, 1992.

Hugh J. Dolan,

Administrative Law Judge.

Any administrative appeal from this decision must be filed with the Office of the Under Secretary for Export Administration, Bureau of Export Administration, U.S. Department of Commerce, Room H–3898B, 14th Street and Pennsylvania Ave., NW., Washington, DC 20230, within 30 days of service. 15 CFR § 788.22. This Order is not effective until the expiration of the 30-day period or the completion of the administrative appellate review, whichever is later.

[FR Doc. 93–29953 Filed 12–7–93; 8:45 am]

BILLING CODE 3510–DT–M

that the draft guidelines were prepared for determination of administrative sanctions in the context of the settlement of cases. However, it does not appear that they have ever been implemented. Further, the Agency has not furnished them to this Tribunal! It is not appropriate to increase the sanctions just because the Respondent elected to request an adjudication. The added legal cost is sustained by both sides. "It is important that penalty increases are justified by the record and not "chill" the legitimate right to request a hearing. *See Von Hartmann*, 6 Ocean Resources and Wildlife Reporter 286 (NOAA 1990), as modified ___ O.R.W. ___ (NOAA October 23, 1991) (penalty assessed by the Administrative Law Judge reduced).

[2] The term Middle East relates to those nations that engage in and support the Boycott of Israel.

[3] This Order does not impose export restrictions upon the separate corporate parent companies of Jno. H. Swisher Son, Inc.; American Maize-Products or on Helme Tobacco Company with respect to their usual and historic Export activity. They may not substitute themselves or otherwise engage in the Export Activities of Respondent.

Foreign-Trade Zones Board

[Order No. 665]

Grant of Authority; Establishment of a Foreign-Trade Zone, Dona Ana County, NM

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board of County Commissioners of Dona Ana County, New Mexico (the Grantee), has made application (filed 7–14–92, FTZ Docket 24–92, 57 FR 33318, 7/28/92) to the Board, requesting the establishment of a foreign-trade zone at sites in Dona Ana County, New Mexico, (Santa Teresa Customs Station area, adjacent to the El Paso Customs port of entry); and,

Whereas, notice inviting public comment has been given in the **Federal Register** and the Board has found that the requirements of the Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 197, at the sites described in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 26th day of November 1993.

Foreign-Trade Zones Board.

Ronald H. Brown,

Secretary of Commerce, Chairman and Executive Officer.

[FR Doc. 93–29954 Filed 12–7–93; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A-307-701]

Aluminum Rod From Venezuela; Determination Not To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order on aluminum rod from Venezuela.

EFFECTIVE DATE: December 8, 1993.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order, pursuant to section 353.25(d)(4)(iii) of the Department's regulations, if no interested party has requested an administrative review for five consecutive annual anniversary months and no domestic interested party objects to the revocation.

We had not received a request to conduct an administrative review of the antidumping duty order on aluminum rod from Venezuela (53 FR 31903, August 22, 1988) for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on August 5, 1993, we published in the **Federal Register** a notice of intent to revoke the order and served written notice of the intent to each interested party on the Department's service list.

On August 10, 1993, a domestic interested party, the Southwire Company, objected to our intent to revoke the order. Therefore, because a domestic interested party objected to the revocation, we no longer intend to revoke this antidumping duty order.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93-29955 Filed 12-7-93; 8:45 am]

BILLING CODE 3510-DS-M

[A-357-504]

Barbed Wire and Barbless Fencing Wire From Argentina; Intent to Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on barbed wire and barbless fencing wire from Argentina.

Domestic interested parties who object to this revocation must submit their comments in writing no later than November 30, 1993.

EFFECTIVE DATE: December 8, 1993.

FOR FURTHER INFORMATION CONTACT: Maureen Shields or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482-3601.

SUPPLEMENTARY INFORMATION:

Background

On November 13, 1985, the Department of Commerce (the Department) published an antidumping duty order on barbed wire and barbless fencing wire from Argentina (50 FR 46808). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by section 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than November 30, 1993, domestic interested parties, as defined in section 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by November 30, 1993, or domestic interested parties do not object to the Department's intent to revoke by November 30, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: November 24, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93-29956 Filed 12-7-93; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-504]

Candles From the People's Republic of China; Determination Not To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order on candles from the People's Republic of China.

EFFECTIVE DATE: December 8, 1993.

FOR FURTHER INFORMATION CONTACT: Valerie Turoscy or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482-3601.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order, pursuant to § 353.25(d)(4)(iii) of the Department's regulations, if no interested party has requested an administrative review for five consecutive annual anniversary months and no domestic interested party objects to the revocation.

We had not received a request to conduct an administrative review of the antidumping duty order on candles from the People's Republic of China (51 FR 30686, August 28, 1986) for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on August 5, 1993, we published in the **Federal Register** a notice of intent to revoke the order and served written notice of the intent to each interested party on the Department's service list.

On August 31, 1993, a domestic interested party, the National Candle Association, objected to our intent to revoke the order. Therefore, because a domestic interested party objected to the

revocation, we no longer intend to revoke this antidumping duty order.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93-29957 Filed 12-7-93; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-827, A-549-808]

Initiation of Antidumping Duty Investigations: Certain Cased Pencils From the People's Republic of China and Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 8, 1993.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai or Vincent Kane, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-4087 or 482-2815.

INITIATION OF INVESTIGATION:

The Petition

On November 9, 1993, we received a petition filed by the Pencil Makers Association Inc. ("petitioner"), the trade association representing the domestic pencil-manufacturing industry, on behalf of its pencil manufacturing members. However, the International Trade Commission ("ITC") did not receive the petition filed in proper form until November 10, 1993. Therefore, consistent with 19 CFR 353.12(c), we consider the petition to have been officially filed with the Department on that date.

In accordance with 19 CFR 353.12, petitioner alleges that imports of certain cased pencils ("pencils") from the People's Republic of China ("PRC") and Thailand are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that such imports are materially injuring, or threatening material injury to, a U.S. industry.

Petitioner states that it has standing to file the petition because the Pencil Makers Association Inc. is an interested party, as defined under sections 771(9)(C) and (E) of the Act and the petition is filed on behalf of its pencil manufacturing members. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, it should file a written notification with the Assistant Secretary for Import Administration.

Scope of Investigation

The products covered by these investigations are certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (e.g., with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to these investigations are classified under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Specifically excluded from the scope of these investigations are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, or chalks.

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

United States Price and Foreign Market Value

The People's Republic of China

Petitioner based United States Price ("USP") on 1993 price quotes made on a packed, f.o.b. Hong Kong basis from a Hong Kong trading company involved in a joint venture with a Chinese pencil manufacturer. Petitioner made no adjustment to the prices.

Petitioner contends that the foreign market value ("FMV") of PRC-produced imports subject to this investigation must be determined in accordance with section 773(c) of the Act, which concerns non-market economy ("NME") countries. The Department has determined the PRC to be an NME, within the meaning of section 771(18)(A) of the Act, in previous cases (see *e.g., Final Determination of Sales at Less Than Fair Value: Certain Compact Ductile Iron Waterworks Fittings and Accessories Thereof from the PRC,* 58 FR 37908 (July 14, 1993)) (*"CDIW Fittings"*). In accordance with 771(18)(C) of the Act, that determination continues to apply for purposes of this initiation.

In the course of this investigation, parties will have the opportunity to address this NME determination and provide relevant information and argument on this issue. In addition, parties will have the opportunity in this investigation to submit comments on whether FMV should be based on prices or costs in the PRC consistent with section 773(c)(1)(B) of the Act (see *Amendment to Final Determination of Sales at Less Than Fair Value And Amendment to Antidumping Duty Order: Chrome-Plated Lug Nuts from the People's Republic of China,* 57 FR 15052 (April 24, 1992)).

Because of the extent of central government control in an NME, the Department further considers that a single antidumping margin, should there be one, is appropriate for all exporters from the NME. Only if individual NME exporters are free of central government ownership and can demonstrate an absence of central governmental control with respect to the pricing of exports, both in law and in fact, will they be considered eligible for separate, owner-specific deposit rates. (See *Final Determination of Sales at Less Than Fair Value: Helical Spring Lock Washers from the People's Republic of China,* 58 FR 48833 (September 20, 1993) for a discussion of the information the Department considers appropriate to warrant calculation of separate rates.)

In accordance with section 773(c) of the Act, FMV in NME cases is based on NME producers' factors of production valued in a market economy country. Petitioner calculated FMV on the basis of the valuation of the factors of production based on information available about production processes in the PRC.

In valuing the factors of production, petitioner used India as the primary surrogate country. However, petitioner was unable to obtain values for all factors in India. For some of these factors, petitioner supplied values from other surrogate countries, i.e., Sri Lanka and Indonesia. For purposes of this initiation, we have, pursuant to section 773(c)(4) of the Act, accepted India, Sri Lanka, and Indonesia as appropriate surrogate countries because their economies are at a level of development comparable to the PRC's. (See Memorandum to David L. Binder, Director—Division II, Office of Antidumping Investigations from David P. Mueller, Director, Office of Policy, dated August 1993, regarding non-market economy status and surrogate country selection on file in room B-099 of the Department of Commerce.)

In accordance with section 773(c)(1)(B) of the Act, petitioner's FMV consisted of the sum of values assigned to materials, labor, energy, and depreciation. To this, petitioner added general expenses, profit and packing. Petitioner made an error in the calculation of paint costs and we have adjusted petitioner's calculation to correct for this error. In addition, to

value the material inputs for cores, petitioner used two methodologies which involved: (1) Using only the costs of unprocessed graphite and kaolin clay; and (2) using the cost of a finished core. We found that the second methodology would double count certain expenses included in the cost of a finished core (e.g., energy to produce the core, labor hours, etc.). Therefore, we have not accepted petitioner's second methodology for valuing the material inputs for cores and, instead, relied only on the first methodology.

Petitioner adjusted certain production costs to reflect differences in inflation and currency exchange rates between the dates of the U.S. price quote and the dates of the reported data.

Pursuant to sections 773 (c)(1) and (e)(1) of the Act, petitioner added to the labor and material costs the statutory minima of 10 percent for general expenses and 8 percent for profit, as well as an amount for packing based on the experience of a U.S. producer.

Thailand

Petitioner based USP on a 1993 price quote made on an f.o.b. basis by a Thai wholesaler to an unrelated U.S. importer. Petitioner added to this f.o.b. price quote an amount to reflect the Thai value added tax (VAT). Petitioner did not adjust the quoted price to reflect foreign inland freight costs or commissions.

Petitioner based FMV on a 1993 price quote for sales in the Thai market from a Thai wholesaler. Petitioner added to this price an amount to reflect the Thai VAT. Petitioner has made no other adjustments to the price.

Fair Value Comparisons

For the PRC, based on its comparisons of USP and FMV, petitioner alleges dumping margins ranging from 72.31 percent to 90.64 percent. For Thailand, petitioner alleges dumping margins of 9.68 percent.

Initiation of Investigations

We have examined the petition on pencils and have found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of pencils from the PRC and Thailand are being, or are likely to be, sold in the United States at less than fair value.

ITC Notification

Section 732(d) of the Act requires us to notify the ITC of these actions, and we have done so.

Preliminary Determination by the ITC

The ITC will determine by December 27, 1993, whether there is a reasonable indication that imports of pencils from the PRC and Thailand are materially injuring, or threaten material injury to, a U.S. industry. A negative ITC determination on either of these will result in the investigations being terminated: otherwise, each of these investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: November 30, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-29958 Filed 12-7-93; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-824]

Notice of Preliminary Determination of Sales at Less Than Fair Value; Silicon Carbide From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 8, 1993.

FOR FURTHER INFORMATION CONTACT: Edward Easton or Andrew McGilvray, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1777 or (202) 482-0108, respectively.

PRELIMINARY DETERMINATION: We preliminarily determine that silicon carbide from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on July 12, 1993, (58 FR 38361, July 16, 1993), the following events have occurred.

On August 5, 1993, the U.S. International Trade Commission (ITC) notified us of its preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of silicon carbide from the PRC that are alleged to be sold at less than fair value.

On July 26, 1993, the Department of Commerce (the Department) sent the PRC's Ministry of Foreign Trade and Economic Cooperation (MOFTEC) the antidumping questionnaire. (The antidumping questionnaire was divided into three sections. Section A requesting general information on each company, section C requesting information on, and a listing of, U.S. sales made during the period of investigation (POI), and section D requesting information on the production process, including specific amounts of each input used in manufacturing silicon carbide.) We informed MOFTEC that it was responsible for forwarding the questionnaire to all exporters and producers of silicon carbide and submitting complete questionnaire responses on their behalf.

On August 27, 1993, MOFTEC informed the Department that several exporters would participate in the antidumping investigation through their U.S. counsel. On August 30, 1993, the Department reiterated its request that MOFTEC provide us with a list of all the companies exporting silicon carbide to the United States from the PRC.

On September 15, 1993, six exporters submitted responses to Section A of the questionnaire: Hainan Feitian Electrontech Co., Ltd., Shaanxi Minmetals, Xiamen Abrasive Co., 7th Grinding Wheel Factory Import and Export Corp., Qinghai Metals and Minerals Import & Export Corp., and The Import and Export Corporation of Inner Mongolia Autonomous Region. Also on September 15, MOFTEC submitted to the Department a list of PRC exporters of silicon carbide. On this list were two exporters that did not submit responses to the Department's questionnaire, China National Minerals Import and Export Corp., Beijing, and China Metallurgical Import & Export Jiangsu Corporation, Nanjing.

The Department requested clarifications of the submitted Section A responses on September 23 and September 29, 1993, and the six respondents submitted additional information concerning Section A on October 8 and October 13, 1993. In these responses, three of the respondent/exporters requested that the Department consider the PRC's silicon carbide industry to be a market-oriented industry. In addition, each of the six respondents asserted that it was not owned by the central government and, therefore, that it was eligible for a separate dumping margin.

On September 29 and September 30, 1993, the six respondents submitted their answers to sections C and D of the Department's questionnaire. The

Department requested additional information concerning the questionnaire responses on October 14, 22, and 27, 1993. Additional responses were submitted on October 21 and 28 and on November 5 and November 8, 1993.

On November 4, 1993, we requested that MOFTEC provide information concerning the ownership of China National Minerals Import and Export Corp., Beijing, and China Metallurgical Import & Export Jiangsu Corporation, Nanjing, the two non-participating exporters identified in its September 15, 1993, letter. As of the date of this preliminary determination, we have not received a reply to this inquiry.

We received both arguments and information from petitioner and respondents shortly before the deadline for this determination and, therefore, we could not consider them at this time.

Scope of Investigation

The product covered by this investigation is silicon carbide, regardless of grade or form, containing by weight from 20 to 98 percent, inclusive, silicon carbide and with a grain size coarser than size 325F (as set by the American National Standards Institute), and inclusive of split sizes. Silicon carbide covered by this investigation typically contains additional impurities: iron, aluminum, silica, silicon, and carbon as well as calcium and magnesium. Silicon carbide is currently classifiable under subheadings 2849.20.10 and 2849.20.20 of the Harmonized Tariff Schedule (HTS). The HTS numbers are provided for convenience and customs purposes. The written description is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 1993, through June 30, 1993.

Market-Oriented Industry

Three respondents in this investigation have claimed that the silicon carbide industry is a market-oriented industry ("MOI"). These respondents claim that all of the manufacturers' material and non-material inputs used to produce silicon carbide were purchased at market-driven prices during the POI. Accordingly, these respondents state that it is appropriate for the Department to use the PRC prices for material and non-material inputs for valuing the inputs used to produce silicon carbide.

In the *Preliminary Determination of Sales at Less Than Fair Value: Sulfanilic Acid From the People's Republic of China* (57 FR 9409, 9410, (March 18, 1992)) ("*Sulfanilic Acid*"), the Department set forth the following criteria to be used in determining whether a MOI exists in an economy which would otherwise be considered non-market:

- For merchandise under investigation, there must be virtually no government involvement in setting prices or amounts to be produced. For example, state-required production of the merchandise, whether for export or domestic consumption in the non-market economy country would be an almost insuperable barrier to finding a market-oriented industry.
- The industry producing the merchandise under investigation should be characterized by private or collective ownership. There may be state-owned enterprises in the industry but substantial state ownership would weigh heavily against finding a market-oriented industry.
- Market-determined prices must be paid for all significant inputs, whether material or non-material, and for an all but insignificant proportion of all the inputs accounting for the total value of the merchandise under investigation. For example, an input price will not be considered market-determined if the producers of the merchandise under investigation pay a state-set price for the input or if the input is supplied to the producers at government direction. Moreover, if there is any state-required production in the industry producing the input, the share of state-required production must be insignificant.

If these conditions are not met, then, pursuant to 19 CFR 353.52, the producers of the merchandise under investigation will be treated as non-market economy (NME) producers, and the foreign market value will be calculated by using prices and costs from a surrogate country, in accordance with sections 773(c) (3) and (4) of the Act.

The questionnaire which was sent through MOFTEC to these respondents included an optional section on MOI. That section contains questions which parties must address if they wish to make a MOI claim. It seeks to determine whether or not government control is present and if market forces are at work with respect to the pricing of the inputs used to produce the subject merchandise. In their September 29, 1993, responses to this section of the questionnaire, three respondents asserted that the prices and costs for all of the material and non-material inputs used to produce silicon carbide were market-driven, and that none of the factories' suppliers produced any of the inputs for in-plan production. Specifically, these respondents claimed that none of the factories producing the subject merchandise purchased their material or non-material inputs from suppliers that also produced the same inputs for in-plan factories producing the subject merchandise or other types of merchandise that were designated for in-plan production.

In applying the MOI criteria to the silicon carbide industry in the PRC, we find that coal is a significant material input used to produce silicon carbide. The respondents state that they are free to negotiate the price paid for coal, and that they are not aware of state control of coal production, or of in-plan coal production, with regard to their suppliers. However, the World Bank's January 1992 Discussion Paper on the "The Sectoral Foundations of China's Development," a publicly available document, demonstrates that coal prices in the PRC are not market-determined, and that in-plan production is an important aspect of the Chinese coal industry. Therefore, at least one of the principal inputs to silicon carbide production is affected by state influence with regard to both its production levels and its pricing. (*See also* the Department's concurrence memorandum, dated November 29, 1993, on file in room B-099 of the Main Commerce Department building.)

Since we preliminarily find that a significant material input is not purchased at market-determined prices, we do not need to consider whether (1) the prices of other material or non-material inputs are market-determined; (2) whether there is state-required production of the subject merchandise or (3) whether there is substantial state ownership in the silicon carbide industry. See *Final Negative Countervailing Duty Determinations: Oscillating and Ceiling Fans from the PRC*, 57 FR 24018, 24019 (June 5, 1992). Therefore, we have preliminarily determined that the MOI criteria outlined in *Sulfanilic Acid* have not been met. Based on this finding, we have used surrogate values in calculating foreign market value (FMV), as discussed below.

Separate Rates

To determine whether a NME exporter is eligible for a separate rate, the Department first analyzes ownership. If an exporter is owned by the central government, the Department will not issue a separate rate for that exporter. Instead, the Department assigns to all central government-owned exporters a single, weighted-average margin.

In *Final Determination of Sales at Less Than Fair Value: Certain Compact*

Ductile Iron Waterworks Fittings and Accessories Thereof From the People's Republic of China (58 FR 37908, July 14, 1993), the Department determined that NME exporters owned by the central government are not eligible for antidumping duty rates separate from each other because ownership by the central government enables the government to manipulate prices, whether or not it takes advantage of its opportunity to do so during the period of investigation. Accordingly, entities owned by the central government cannot be eligible for rates different or separate from each other. To calculate a rate for exporters owned by the central government, the Department requires that all potential respondents that are owned by the central government reply to the antidumping questionnaire. Only complete responses from all the entities owned by the central government could enable the Department to calculate a weighted-average antidumping margin for the central government-controlled entities.

In *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers From the People's Republic of China* (58 FR 48833, September 20, 1993), the Department determined that if an exporter is not owned by the central government the Department will consider issuing a separate rate. This is because the opportunity for the central government to manipulate the exporter's prices is less than its opportunity to control the prices of enterprises owned by the central government. However, as in the case of central government-owned exporters, it would still be possible for enterprises under common ownership (*e.g.*, regional governments, local governments, collectives, etc.) to have their prices manipulated by the common owner. All the relevant firms owned by an entity must cooperate in the investigation to enable the Department to calculate a weighted-average dumping margin for them.

In this investigation, MOFTEC has informed the Department that the central government does not own any of the exporters of silicon carbide. Further, submissions on the record indicate that none of the responding exporters share ownership with each other, or with the two non-respondent exporters listed by MOFTEC. Neither of the non-respondent exporters is located in the same province as the six responding exporters (see below).

Given that each of the six responding exporters is neither owned by the central government nor owned by another jurisdiction or entity that also owns other exporters of the subject merchandise, we may consider issuing separate rates to these respondents. The criteria the Department relies upon to establish whether or not separate rates are appropriate are those put forward in the *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China* (56 FR 20588, May 6, 1991) ("*Sparklers*"). Under the *Sparklers* criteria, the Department issues separate rates where respondents can demonstrate both a *de jure* and *de facto* absence of central government control over export activities.

In this investigation, each of the six cooperative exporters has documented that its business license provides that its ownership is distinguished from central-government ownership. MOFTEC has confirmed this in its letter to the Department, dated November 1, 1993. This information indicates that there is a *de jure* absence of central government control.

The six cooperating respondents have each asserted that it establishes its own export prices and keeps the proceeds of its export sales and that its management operates with a high degree of autonomy. This information indicates the *de facto* absence of central government control with respect to exports. Consequently, we have determined that these six cooperating exporters have met the criteria set forth in *Sparklers* as necessary for the application of separate rates.

Surrogate Country

Section 773(c) of the Act requires the Department to value the factors of production, to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the non-market economy country, and that are significant producers of comparable merchandise. The Department has determined that India and Pakistan are the most comparable to the PRC in terms of overall economic development, based on per capita gross national product ("GNP"), the national distribution of labor, and growth rate in per capita GNP. (*See* memorandum from the Office of Policy to Gary Taverman, dated August 17, 1993.) Because India fulfills both requirements outlined in the statute, India is the preferred surrogate country for purposes of calculating the factors of production used in producing the subject merchandise. We have resorted to Pakistan for several surrogate values, where Indian values were either unavailable or significantly outdated. In addition, we have used a world-market price in one instance where no appropriate surrogate value was available. We have used the values for the factors of production, as appropriate, from those sources. We have obtained and relied upon published, publicly available information, wherever possible.

Fair Value Comparisons

To determine whether sales of silicon carbide from the PRC to the United States were made at less than fair value, we compared the United States price (USP) to the FMV, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP on purchase price sales made directly to unrelated parties prior to the date of importation into the United States, in accordance with section 772(b) of the Act. We used purchase price as defined in section 772 of the Act, because the subject merchandise was sold to unrelated parties in the United States prior to importation into the United States, and because exporter's sales price methodology was not indicated by other circumstances.

For those exporters that responded to the Department's questionnaire, we calculated purchase price based on packed, FOB foreign-port prices to unrelated purchasers in the United States. We made deductions for foreign inland freight, which was calculated on the basis of surrogate Indian freight rates.

Foreign Market Value

We calculated FMV based on factors of production reported by the factories which produced the subject merchandise for these respondents. The factors used to produce silicon carbide include materials, labor, and energy. To calculate FMV, the reported factors of production were multiplied by the appropriate surrogate values for the different inputs. (For a complete analysis of surrogate values, see our concurrence memorandum.)

We used surrogate transportation rates to value inland freight from the factories to ports. In the case of material inputs, we also used surrogate transportation rates to value the transportation of inputs to the factories. In those cases where a respondent failed to provide transportation distances, we applied the longest train and truck rates from our surrogate data as the best information available.

To value silica sand and coal, we used publicly available information from the *Indian Minerals Yearbook 1992*. We adjusted the factor values to the POI

using wholesale price indices published by the International Monetary Fund.

To value electricity, we used publicly available information from the "Monthly Statistical Bulletin" published by the Pakistani Federal Bureau of Statistics. We selected this source because it provided an electricity rate for industrial use in the POI. The most recent published, publicly available Indian electricity rate for industrial use dated from 1985.

To value petroleum coke, we used "current petroleum coke prices" reported in *Coal Week International* during the POI. Because these prices were reported on FOB, U.S.-port bases, we adjusted the prices to an FOB Asian port basis. Although we would have preferred to rely upon a surrogate country's published, publicly available statistics for valuing petroleum coke, the import statistics for India and Pakistan referred to calcined petroleum coke, a further processed product. We could not find any appropriate statistics for the third, fourth, and fifth surrogate choices: Kenya, Nigeria, and Sri Lanka. The import statistics for the sixth surrogate choice, Indonesia, reported a small metric tonnage for petroleum coke during the period January–June 1989. Our analysis, however, has led us to conclude that this figure, when compared with reported U.S.-port prices during the POI, is too high to be considered reasonable.

To value labor costs, we used the International Labor Office's *1992 Yearbook of Labor Statistics*. To determine the number of hours in an Indian workday, we used the *Country Reports: Human Rights Practices for 1990*.

To value factory overhead, selling, general and administrative expenses, and profit, we calculated percentages based on elements of industry group income statements from *The Reserve Bank of India Bulletin*. We adjusted the factory overhead calculations to take into account respondents' actual energy consumption experience. For selling, general and administrative (SG&A) expenses, we used the statutory minimum of ten percent of materials, labor, and factory overhead because the calculated figure was less than ten percent. For profit we used the statutory minimum of eight percent of materials, labor, factory overhead, and SG&A expenses, because the calculated figure was less than eight percent.

We also added, where appropriate, an amount for packing labor based on the appropriate Indian wage rate, and an amount for packing materials based on Indian prices to derive the FMV for one metric ton of silicon carbide. We made no adjustments for selling expenses. We added surrogate freight costs for the delivery of inputs and packing materials to the factories producing silicon carbide.

Best Information Available

The Department's policy, as set forth in *Lock Washers*, is that all potential exporters owned by a given entity must cooperate in our investigation in order for the response to be considered complete.

MOFTEC did not submit a consolidated questionnaire response on behalf of all PRC exporters of silicon carbide. As noted above, the list of PRC exporters of silicon carbide submitted by MOFTEC contained the names of firms which have not responded to the Department's antidumping questionnaire. Since the Department must receive an adequate questionnaire response from each entity to which a separate dumping margin rate can be applied, all non-respondent entities must receive a single "All Other" rate. In the absence of adequate questionnaire responses from the other exporters of silicon carbide, we have based our "All Other" rate on the best information available (BIA).

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. According to the Department's two-tiered BIA methodology outlined in the *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Belgium*, 58 FR 37083 (July 9, 1993), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. Here, where some PRC exporters failed to respond to our questionnaire, we are assigning 406.00 percent (the highest margin calculated in the petition, as amended) as BIA to such exporters (*i.e.*, all exporters other than the responding exporters).

Verification

As provided in section 776(b) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of silicon carbide from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
7th Grinding Wheel Factory Import and Export Corporation ...	56.25
The Import and Export Trading Corporation of Inner Mongolia Autonomous Region	8.54
The Qinghai Metals and Minerals Import and Export Corporation	11.16
Xiamen Abrasive Company	30.68
Shaanxi Minmetals	105.24
Hainan Feitian Electrontech Company, Ltd	67.74
All Others	406.00

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than December 23, 1993, and rebuttal briefs, no later than December 30, 1993. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on January 6, 1994, at 10:00 a.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, N.W.,

Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, within ten days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by February 14, 1994.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: November 29, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-29960 Filed 12-7-93; 8:45 am]

BILLING CODE 3510-DS-P

[C-357-801]

Light-Walled Rectangular Tubing From Argentina; Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on light-walled rectangular tubing from Argentina.

EFFECTIVE DATE: December 8, 1993.

FOR FURTHER INFORMATION CONTACT: Cameron Cardozo or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 51617) its intent to revoke the countervailing duty order on light-walled rectangular tubing from Argentina (53 FR 37619; September 27, 1988). Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or no interested party requests an administrative review by the last day of the fifth anniversary month.

On October 22, 1993, Hannibal Industries, Inc., a domestic producer of the subject merchandise, objected to our intent to revoke the order. Because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the order.

This determination is in accordance with 19 CFR 355.25(d)(4).

Dated: December 1, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93-29962 Filed 12-7-93; 8:45 am]

BILLING CODE 3510-DS-P

[C-357-801]

Heavy-Walled Rectangular Tubing From Argentina Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on heavy-walled rectangular tubing from Argentina.

EFFECTIVE DATE: December 8, 1993.

FOR FURTHER INFORMATION CONTACT: Cameron Cardozo or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 51617) its intent to revoke the countervailing duty order on heavy-walled rectangular tubing from Argentina (53 FR 37619; September 27, 1988). Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or no interested party requests an administrative review by the last day of the fifth anniversary month.

On October 22, 1993, Hannibal Industries, Inc., a domestic producer of the subject merchandise, objected to our intent to revoke the order. Because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the order.

This determination is in accordance with 19 CFR 355.25(d)(4).

Dated: December 1, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93-29963 Filed 12-7-93; 8:45 am]

BILLING CODE 3510-DS-P

[A-351-824, A-570-828, A-823-805, A-307-811]

Initiation of Antidumping Duty Investigations: Silicomanganese From Brazil, the People's Republic of China, Ukraine and Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 8, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Ready or Lori Way, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-2613 and 482-0114, respectively.

INITIATION OF INVESTIGATIONS:

The Petition

On November 12, 1993, we received a petition filed in proper form by Elkem Metals Company and the Oil, Chemical & Atomic Workers Local 3-639 (petitioners). Petitioners filed supplements to the petition on November 17 and 24, 1993, pursuant to 19 CFR 353.12(e). In accordance with 19 CFR 353.12, petitioners allege that silicomanganese from Brazil, the People's Republic of China (PRC), Ukraine and Venezuela is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioners have stated that they have standing to file the petition because they are interested parties as defined under sections 771(9) (C) and (D) of the Act, and because the petition was filed on

behalf of the U.S. industry producing the product subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E) or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, such party should file a written notification with the Assistant Secretary for Import Administration.

Under the regulations of the Department of Commerce (the Department), any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

Scope of Investigations

The merchandise covered by these investigations is silicomanganese from Brazil, the PRC, Ukraine and Venezuela. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon, and iron, and normally containing much smaller proportions of minor elements, such as carbon, phosphorous and sulfur. Silicomanganese generally contains by weight not less than 4% iron, more than 30% manganese, more than 8% silicon and not more than 3% phosphorous. All compositions, forms and sizes of silicomanganese are included within the scope of these investigations, including silicomanganese slag, fines and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. These investigations cover all silicomanganese, regardless of its tariff classification. Most silicomanganese is currently classifiable under subheading 7202.30.0000 of the Harmonized Tariff Schedule of the United States (HTS). Some silicomanganese may also be classifiable under HTS subheading 7202.99.5040. Although the HTS subheading is provided for convenience and customs purposes, our written descriptions of the scope of these proceedings are dispositive.

We have adopted the above scope for purposes of this initiation. We intend to clarify the scope of these investigations at the time of our preliminary determinations. For this purpose, we invite comments from interested parties. We also intend to solicit views from the U.S. Customs Service regarding the scope of these investigations.

United States Price

Petitioners based their estimates of U.S. price (USP) for all four countries on weighted-average Customs unit values calculated from Department import statistics. Petitioners made deductions for foreign inland freight in the cases of Brazil and Venezuela. Additionally, in the case of Brazil, petitioners made an addition for the Brazilian ICMS tax (VAT) imposed on home market, but not export, sales.

Foreign Market Value

1. Brazil

Petitioners based foreign market value (FMV) for Brazil on a ICMS tax-inclusive, FOB producer's plant, price quote developed by a market researcher in Brazil. From the quoted price, petitioners deducted an amount for credit expense. Petitioners adjusted the price quote for one month's inflation. We adjusted petitioners' methodology by conforming the calculation of credit expense to the Department's practice, and by substituting an inflation factor which we calculated using International Monetary Fund data.

Based on comparisons of USP and FMV, the margin of dumping of silicomanganese from Brazil alleged by petitioners is 17.6 percent.

2. Nonmarket Economies

Petitioners contend that the FMV of PRC- and Ukraine-produced imports subject to these investigations must be determined in accordance with section 773(c) of the Act, which concerns nonmarket economy ("NME") countries. The Department has determined the PRC and Ukraine to be NME countries, within the meaning of section 771(18)(A) of the Act, in previous cases (See, *e.g., Final Determination of Sales at Less Than Fair Value: Certain Compact Ductile Iron Waterworks Fittings and Accessories Thereof from the PRC*, 58 FR 37908 (July 14, 1993)) and *Final Determinations of Sales at Less Than Fair Value: Ferrosilicon from Kazakhstan and Ukraine*, 58 FR 13050 (March 9, 1993), respectively). In accordance with 771(18)(C) of the Act, these determinations continue to apply for purposes of this initiation.

In the course of these investigations, parties will have the opportunity to address these NME determinations and provide relevant information and argument on this issue. In addition, parties will have the opportunity in these investigations to submit comments on whether FMV should be based on prices or costs in the PRC and Ukraine consistent with section 773(c)(1)(B) of the Act (See *Amendment to Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order: Chrome-Plated Lug Nuts from the People's Republic of China*, 57 FR 15052 (April 24, 1992)).

Because of the extent of central government control in an NME, the Department further considers that a single antidumping margin, should there be one, is appropriate for all exporters from each NME. Only if individual NME exporters are free of central government ownership and can demonstrate an absence of central governmental control with respect to the pricing of exports, both in law and in fact, will they be considered eligible for separate, owner-specific deposit rates. (See *Final Determination of Sales at Less Than Fair Value: Helical Spring Lock Washers from the People's Republic of China*, 58 FR 48833 (September 20, 1993) for a discussion of the information the Department considers appropriate to warrant calculation of separate rates.)

In accordance with section 773(c) of the Act, FMV in NME cases is based on NME producers' factors of production valued in a market economy country. In accordance with section 773(C)(1)(B) of the Act, petitioners' FMV consisted of the sum of values assigned to materials, labor, energy and depreciation. To this, petitioners added general expenses and profit.

(a) PRC

Petitioners calculated FMV on the basis of the valuation of factors of production derived from information developed by a market researcher in India about production processes in India. Petitioners claim that India is comparable in economic development to the PRC and that India is a significant producer of silicomanganese. For purposes of this initiation, we have, pursuant to section 773(C)(4) of the Act, accepted India as an appropriate surrogate country because its economy is at a level of development comparable to the PRC's and because it is a significant producer of comparable merchandise. (See Memorandum to David L. Binder, Director-Division II, Office of Antidumping Investigations from David P. Mueller, Director, Office of Policy, dated October 16, 1992, regarding *Certain Helical Spring Lock Washers from the People's Republic of China (PRC): Nonmarket Economy Status and Surrogate Country Selection* which is on file in room B–099 of the Department of Commerce.)

One factor, which petitioner claims is captively produced in India, and for which petitioner was unable to find a value in India or other potential surrogate countries, was valued in the United States. Petitioners have stated

that this value was the only information reasonably available to them. Because an appropriate amount for factory overhead was not available from surrogate data, the amount added was based in part on the experience of Elkem's plant located in the United States. Petitioners added amounts for general expenses and profit based on the statutory minimum percentages. Packing cost is not applicable since this product is shipped in bulk.

The margin of dumping of silicomanganese from the PRC alleged by petitioners is 150.0 percent.

(b) Ukraine

Petitioners calculated FMV on the basis of the valuation of factors of production derived from information developed by a market researcher in Mexico about production processes in Mexico. Petitioners claim that Mexico is comparable in economic development to Ukraine and that Mexico is a significant producer of silicomanganese. For purposes of this initiation, we have, pursuant to section 773(C)(4) of the Act, accepted Mexico as an appropriate surrogate country because its economy is at a level of development comparable to Ukraine and because it is a significant producer of comparable merchandise. (See Memorandum to David L. Binder, Director-Division II, Office of Antidumping Investigations from David P. Mueller, Director, Office of Policy, dated August 11, 1992, regarding *Ferrosilicon from Kazakhstan, Ukraine and Russia: Nonmarket Economy Status and Surrogate Country Selection* on file in room B–099 of the Department of Commerce.)

In the cases of two factors, where factor information was not available in Mexico, petitioners used the factors of a plant located in the United States. The factors were valued using Mexican values developed by the market researcher. One factor, which petitioner claims is captively produced in Mexico, and for which petitioner was unable to find a value in Mexico or other potential surrogate countries, was valued in the United States. Petitioners have stated that this value was the only information reasonably available to them. The amount added for factory overhead was based in part on the experience of Elkem's plant located in the United States. Petitioners added amounts for general expenses and profit based on the statutory minimum percentages. Packing cost is not applicable since this product is shipped in bulk.

The margin of dumping of silicomanganese from Ukraine alleged by petitioners is 125.3 percent.

3. Venezuela

Petitioners based FMV for Venezuela on a purchase order provided by a market researcher. The purchase order contains an FOB producer's plant price. Petitioners made no adjustments to this price.

The margin of dumping of silicomanganese from Venezuela alleged by petitioners ranges from 37.2 to 55.4 percent.

Initiation of Investigations

We have examined the petition on silicomanganese from Brazil, the PRC, Ukraine and Venezuela and have found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of silicomanganese from Brazil, the PRC, Ukraine and Venezuela are being, or are likely to be, sold in the United States at less than fair value.

ITC Notification

Section 732(d) of the Act requires us to notify the International Trade Commission (ITC) of this action and we have done so.

Preliminary Determination by the International Trade Commission

The ITC will determine by December 27, 1993, whether there is a reasonable indication that imports of silicomanganese from Brazil, the PRC, Ukraine and Venezuela are materially injuring, or threaten material injury to, a U.S. industry. Pursuant to section 733(a) of the Act, any ITC determination that is negative will result in the respective investigation being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: December 2, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–29959 Filed 12–7–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–559–502]

Certain Welded Carbon Steel Small Diameter and Light-Walled Rectangular Pipes and Tubes From Singapore; Intent to Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on certain welded carbon steel small diameter and light-walled rectangular pipes and tubes from Singapore.

Domestic interested parties who object to this revocation must submit their comments in writing no later than November 30, 1993.

EFFECTIVE DATE: December 8, 1993.

FOR FURTHER INFORMATION CONTACT: Maureen Shields or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–3601.

SUPPLEMENTARY INFORMATION:

Background

On November 13, 1986, the Department of Commerce (the Department) published an antidumping duty order on certain welded carbon steel small diameter and light-walled rectangular pipes and tubes from Singapore (51 FR 41142). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than November 30, 1993, domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, room B–029, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by November 30, 1993, or domestic interested parties do not object to the Department's intent to revoke by November 30, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: November 12, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93-29961 Filed 12-7-93; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

[I.D. 113093C]

North Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council's Halibut Charter Working Group will hold a public meeting on December 20, 1993, in room 137 of the Federal Building, 222 W. 7th Avenue, Anchorage, AK. The meeting will begin at 9 a.m. and should conclude by 4:30 p.m.

The group will continue to flesh out elements and options of management alternatives for the halibut sport harvest off Alaska.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Judy Willoughby, at (907) 271-2809, at least 10 working days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: David Witherell, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Dated: December 2, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-29872 Filed 12-7-93; 8:45 am]

BILLING CODE 3510-22-P

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of application for a scientific research permit (P437A).

Notice is hereby given that St. George's School has applied in due form for a permit to take listed species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR part 217-227).

The applicant requests authorization to study sea turtles during their pelagic stage and to study sea turtles in their feeding habitats in the Bahamas and the Caribbean. Up to 200 loggerhead (*Caretta caretta*), 200 green (*Chelonia mycas*), 100 hawksbill (*Eretmochelys imbricata*), 5 leatherback (*Dermochelys coriacea*), 5 Kemp's ridley (*Lepidochelys kempii*), and 5 olive ridley (*L. olivacea*) sea turtles would be captured, flipper tagged, blood sampled, and potentially recaptured during research activities. If authorized, the permit would continue research activities previously authorized under Permit 676 for a duration of five years.

Written data or views, or requests for a public hearing on this application should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application summary are those of the Applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910 (301-713-2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503-230-5400).

Dated: November 24, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 93-29865 Filed 12-7-93; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Receipt of application for public display permit (P556).

SUMMARY: Notice is hereby given that Sugarloaf Dolphin Sanctuary, P.O. Box 148, Sugarloaf Key, Florida 33044, has applied in due form for a permit to obtain the care and custody of marine mammals.

DATES: Written documents must be received on or before January 7, 1994.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, Maryland 20910, (301) 713-2289; and

Director, Southeast Region, NMFS, NOAA, 9450 Koger Boulevard, St. Petersburg, FL 33702, (813) 893-3141.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, NMFS, U.S. Department of Commerce, 1315 East-West Highway, room 13130, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of NMFS.

SUPPLEMENTARY INFORMATION: Sugarloaf Dolphin Sanctuary, P.O. Box 148, Sugarloaf Key, Florida 33044, has applied in due form for a permit to obtain the care and custody of marine mammals, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216). The applicant requests permission to maintain up to 12 Atlantic bottlenose dolphins *(Tursiops truncatus)* to be obtained from captive or stranded populations. The themes of the education program associated with the dolphin exhibits include conservation, as well as the life history, behavior, sensory capabilities, and other characteristics of the species.

The arrangements for transporting and maintaining the marine mammals requested in this application will be concluded consistent with requirements established by the U.S. Department of Agriculture under the Animal Welfare Act. The animals will be under the care of a licensed veterinarian at the Sugarloaf Dolphin Sanctuary.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Dated: December 1, 1993.

William J. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93-29906 Filed 12-7-93; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts' next meeting is scheduled for 20 January 1994 at 10 a.m. in the Commission's offices in the Pension Building, suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001, telephone (202) 504-2200 or fax (202) 504-2195, to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, 29 November 1993.

Charles H. Atherton,

Secretary.

[FR Doc. 93-29870 Filed 12-7-93; 8:45 am]

BILLING CODE 6330-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in Bulgaria

December 2, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A Memorandum of Understanding (MOU) dated March 10, 1993, between the Governments of the United States and the Republic of Bulgaria establishes limits for certain wool textile products, produced or manufactured in Bulgaria and exported during the period beginning on January 1, 1994 and extending through December 31, 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Information regarding the availability of the 1994 CORRELATION will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 2, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Memorandum of Understanding dated March 10, 1993, between the Governments of the United States and the Republic of Bulgaria; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in Bulgaria and exported during the twelve-month period beginning on January 1, 1994 and extending through December 31, 1994, in excess of the following levels of restraint:

Category	Twelve-month limit
410	732,250 square meters.
435	20,200 dozen.
448	20,200 dozen.

Imports charged to these category limits for the period January 1, 1993 through December 31, 1993, shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-29951 Filed 12-7-93; 8:45 am]

BILLING CODE 3510-DR-F

Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States; Changes to the 1993 and 1994 Correlation

December 2, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Changes to the 1993 and 1994 Correlation.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

The Correlation: Textile and Apparel Categories based on the Harmonized Tariff Schedule of the United States presents the harmonized tariff numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the bilateral agreement program. The 1993 Correlation should be amended to

reflect the following administrative changes, effective on November 8, 1993:

Obsolete number	New number
6210.40.2020 (334)	6210.40.2025 (334)—Definition remains the same.
6210.40.2035 (347)	6210.40.2033 (347)—Definition remains the same.
6210.40.2040 (359)	6210.40.2045 (359)—Definition remains the same.
6210.40.2055 (359)	6210.40.2060 (359)—Definition remains the same.
6210.50.2020 (335)	6210.50.2025 (335)—Definition remains the same.
6210.50.2035 (348)	6210.50.2033 (348)—Definition remains the same.
6210.50.2040 (359)	6210.50.2045 (359)—Definition remains the same.
6210.50.2055 (359)	6210.50.2060 (359)—Definition remains the same.

The 1994 Correlation reflects the following administrative changes, effective on January 1, 1994:

Obsolete number	New number
6210.10.4025 (659)	6210.10.4040 (659)—Definition remains the same.
6211.42.0050 (341)	6211.42.0054 (341)—Blouses, shirts and shirtblouses, sleeveless tank styles and similar upper body garments excluded from heading 6206 with two or more colors in the warp and/or filling.
	6211.42.0056 (341)—Blouses, shirts and shirtblouses, sleeveless tank styles and similar upper body garments excluded from heading 6206 other than with two or more colors in the warp and/or filling.
9404.90.8010 (362)	9404.90.8020 (362)—Definition remains the same.
9404.90.9010 (362)	9404.90.9005 (362)—Replace defintion with "with outer shell of cotton."
9404.90.9020 (666)	9404.90.9022 (666)—Replace definition with "with outer shell of man-made fiber."
9404.90.9035 (899)	9404.90.9036 (899)—Definition remains the same.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-29952 Filed 12-7-93; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Department of the Navy

United States Naval Academy Board of Visitors; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the United States Naval Academy Board of Visitors will meet December 16, 1993, 8:30 a.m. at the Russell Senate Office Building, Washington, DC. The session will be closed to the public.

The purpose of this meeting is to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. The entire agenda for the meeting will consist of discussions of key issues regarding investigations into the conduct of various midshipmen at the Naval Academy. Such discussions will relate to the internal personnel rules of the Naval Academy and involve information disclosure which would constitute an unwarranted invasion of personal privacy. In addition, the meeting will discuss investigatory records compiled for law enforcement purposes. The Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c) (2), (5), (6), and (7) of title 5, United States Code.

This notice is being published late because of administrative delays which constitute an exceptional circumstance not allowing Notice to be published in the **Federal Register** at least 15 days before the date of the meeting.

For further information concerning this meeting, contact: Lieutenant Commander Timothy A. Batzler, U.S. Navy, Secretary of the U.S. Naval Academy Board of Visitors, Office of the Superintendent, United States Naval Academy, Annapolis, MD 21402-5000, Phone (410) 267-2402

Dated: December 6, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93-30114 Filed 12-6-93; 1:26 pm]

BILLING CODE 3810-AE-P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Resolution of Potential Conflict of Interest

The Defense Nuclear Facilities Safety Board (Board) has identified and resolved a potential conflict of interest situation related to its contractor, Auxier & Associates, Inc. (Auxier). This notice satisfies the requirements of 10 CFR 1706.8(e) with respect to publication in the **Federal Register.** Under the Board's Organizational and Consultant Conflicts of Interests Regulations, 10 CFR part 1706 (OCI Regulations), an organizational or consultant conflict of interest (OCI) means that because of other past, present or future planned activities or relationships, a contractor or consultant is unable, or potentially unable, to render impartial assistance or advice to the board, or the objectivity of such offeror or contractor in performing work for the Board is or might be otherwise impaired, or such offeror or contractor has or would have an unfair competitive advantage. While the OIC Regulations provide that contracts shall generally not be awarded to an organization where the Board has determined that an actual or potential OCI exists and cannot be avoided, the Board may waive this requirement in certain circumstances.

The results of a staff review of the external dosimetry program at the Department of Energy's (DOE) Pantex Plant (Pantex) raised questions about the adequacy of the determination of the radiation doses that workers received there. While the Board believed there were no immediate dangers related to worker health and safety, it decided to initiate a further review of this program. If, for example, radiation doses were being significantly underreported, the actual health risks to which workers were exposed might be underestimated over the long term. The Board's review was to focus on the adequacy of the neutron dosimeters used at Pantex to measure radiation doses from neutrons at the energies present at exposure locations within the facility. Specifically, the Board wanted to determine whether the Panasonic 802 neutron dosimetry system, then used at Pantex, and the Panasonic 809/812 system, proposed to be used there, were capable of measuring adequately the radiation doses received by workers in the mixed neutron and beta fields present in the assembly and disassembly bays and cells.

While the Board possesses expertise in radiation protection, it did not have

an individual with the depth of specific knowledge and experience in the area of neutron dosimetry required to perform this effort. Therefore, the Board conducted a review of available dosimetry experts and identified eight highly qualified individuals. All were found technically acceptable, but they all had either existing or previous affiliations with the DOE that would give rise to a question of conflict of interest with work for the Board. Following a comprehensive review of the facts and relevant issues, it was determined that Dr. John Auxier, Dr. Howard Prichard, and Dr. John Frazier, all from Auxier & Associates, Inc. (Auxier), were the best qualified for this effort. Also, the potential conflicts of interest presented by Auxier were the least significant in terms of Auxier's ability to provide an unbiased product.

The conflicts-of-interest concern regarding Auxier stemmed from its existing and prior contractual relationships involving DOE contractors and private legal counsel to DOE contractors. Specifically, Auxier was under contract with the management and operating (M&O) contractor at a DOE national laboratory to provide technical advice on matters related to low-level radioactive waste in underground storage tanks. Also, Auxier had served as a subcontractor to a firm that was retained by a different DOE M&O contractor to conduct an internal appraisal of occupational and environmental radiological safety programs at another DOE laboratory. Further, Auxier had performed, or was conducting, evaluations and analysis of health physics programs and other related dosimetry issues at DOE facilities for private counsel to former and current M&O contractors of defense nuclear facilities.

The Board reviewed each of these situations and concluded that there was no direct conflict of interest between the Pantex dosimetry review project and the work Auxier was performing or had completed for DOE, its contractors, and private counsel for such contractors. Further, Auxier had not previously reviewed the Panasonic 802 or 809/812 Systems for anyone.

However, Auxier's current and past relationships raised a question of whether these efforts might impair its ability to be impartial or objective in performing work for the Board, thereby creating a conflict of interest. Specifically, Auxier's efforts for attorneys representing current and former M&O contractors involved dose reconstruction radiation exposure evaluations and broader radiological safety matters, which relate, at least indirectly, to the Board's public health and safety mission. Further, to the extent Auxier's work would be used to defend M&O contractors against allegations of unsafe practices at DOE sites, Auxier could be seen as an advocate for DOE and its contractors. The concern was whether Auxier could be critical of DOE, if necessary, in the conduct of the Pantex review for the Board, while also providing support to DOE prime contractors and counsel representing former and present M&O contractors in litigation involving DOE facilities.

After considering these concerns, the Board concluded that the award to Auxier of the contract for review of the Pantex Dosimetry Program was in the best interest of the Government and that a waiver of any OCI arising from the relationships described above, and the pertinent provisions of the OCI Regulations, was warranted. The reasons underlying this conclusion were as follows:

1. Auxier possessed outstanding expertise in neutron dosimetry, which the Board needed for its review of the Pantex Dosimetry Program. In the Board's view, there was a need to initiate the dosimetry review at Pantex promptly because of potential health and safety concerns related to the workers. Also, within the time available, the Board was unable to identify another similarly qualified firm that was free from potential conflicts of interest. Auxier was found to be the best qualified with the most manageable conflict situation.

2. Auxier advised the Board's staff that the aggregate revenues from Auxier's current work for DOE, DOE contractors, and legal counsel represented less than 5% of the firm's total revenues. In the Board's view, such a small amount of revenues from DOE-related projects should not make Auxier objectively or subjectively financially dependent on DOE.

3. The Board believed that it could avoid or substantially mitigate conflicts of interest by Board technical staff monitoring and scrutiny of Auxier's work products to ensure impartiality and support for all findings and determinations. Moreover, Auxier was fully aware of and sensitive to the issue to conflict of interest and its responsibilities under the Board's OCI regulations, including prior notification to the Board pursuant to the work-for-others provision of those regulations, of work for other persons.

Accordingly, on the basis of the determinations described above and pursuant to the applicable provisions of 10 CFR part 1706, the Chairman of the Board granted a waiver of any conflicts of interests (and the pertinent provisions of the OCI Regulations) with the Board's contract with Auxier that might arise out of previous or existing contractual arrangements of Auxier with DOE, DOE contractors, or legal counsel representing former and current M&O contractors.

Dated: December 1, 1993.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 93-29918 Filed 12-7-93; 8:45 am]

BILLING CODE 6820-KD-M

DEPARTMENT OF EDUCATION

Recognition of Accrediting Agencies, State Agencies for Approval of Public Postsecondary Vocational Education, and State Agencies for Approval of Nurse Education

AGENCY: Department of Education.

ACTION: Request for Comments on Agencies Applying to the Secretary for Initial Recognition or Renewal of Recognition.

DATES: Commenters should submit their written comments by January 3, 1994 at the address below.

FOR FURTHER INFORMATION CONTACT: Carl S. Person, Acting Chief, Accrediting Agency Evaluation Branch, U.S. Department of Education, 400 Maryland Avenue, SW., room 3036 ROB-3, Washington, DC 20202-5244. Telephone: (202) 708-7417. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

Submission of Third-Party Comments: The Secretary of Education recognizes, as reliable authorities as to the quality of education offered by institutions within their scope, accrediting agencies and State approval agencies for public postsecondary vocational education and nurse education that meet certain criteria. The purpose of this notice is to invite interested third parties to present written comments on the agencies listed in this notice that have applied for initial or continued recognition.

The National Advisory Committee on Institutional Quality and Integrity (the "Advisory Committee") advises the Secretary of Education on the recognition of accrediting agencies and State approval agencies. The Advisory Committee is scheduled to meet at least twice during 1994. The first group of agencies listed below will be reviewed

during the Advisory Committee's first scheduled meeting of the year, and the second group of agencies will be reviewed during the Advisory Committee's second meeting. The exact dates of the Committee meetings will be announced in the **Federal Register** at a later date.

All written comments received regarding the agencies listed in this Notice will be considered by the Advisory Committee and by the Secretary.

The following agencies will be reviewed during the first scheduled meeting of the Advisory Committee in 1994. *Nationally Recognized Accrediting Agencies and Associations: Interim Reports* (An interim report is a follow-up report on an agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted recognition to the agency)—

1. Accrediting Commission of Career Schools/Colleges of Technology (formerly the Accrediting Commission for Trade and Technical Schools of the Career College Association and, before that, the National Association of Trade and Technical Schools)
2. Accrediting Council on Education in Journalism and Mass Communications, Accrediting Committee
3. American Association of Bible Colleges, Commission on Accrediting
4. American Board of Funeral Service Education, Committee on Accreditation
5. American Dietetic Association, Division of Education Accreditation/ Approval
6. American Physical Therapy Association, Commission on Accreditation in Education
7. American Society of Landscape Architects, Landscape Architectural Accreditation Board
8. Association for Clinical Pastoral Education, Inc., Accreditation Commission
9. Association of Advanced Rabbinical and Talmudic Schools, Accreditation Commission
10. Computer Sciences Accreditation Board, Inc., Computer Sciences Accreditation Commission
11. Council on Chiropractic Education, Commission on Accreditation
12. Council on Education for Public Health
13. Council on Naturopathic Medical Education, Commission on Accreditation
14. Council on Social Work Education, Commission on Education
15. Foundation for Interior Design Education Research, Committee on Accreditation
16. Middle States Association of Colleges and Schools, Commission on Higher Education
17. National Accrediting Commission of Cosmetology Arts and Sciences
18. National Architectural Accrediting Board, Inc.
19. National Association of Industrial Technology
20. National Association of Schools of Art and Design, Commission on Accreditation
21. National Association of Schools of Music, Commission on Accreditation
22. National Association of Schools of Theatre, Commission on Accreditation
23. National Council for Accreditation of Teacher Education

State Agencies Recognized for the Approval of Public Postsecondary Vocational Education:

Petitions for Renewal of Recognition—

1. Arkansas State Board of Vocational Education
2. Kansas State Board of Education

Interim Reports—

1. Minnesota State Board of Technical Colleges
2. Missouri State Board of Vocational and Technical Education

State Agencies Recognized for the Approval of Nurse Education:

Petitions for Renewal of Recognition—

1. Colorado Board of Nursing
2. Iowa Board of Nursing

In accordance with the Federal policy governing the granting of academic degrees by Federal agencies (approved by letter from the Director, Bureau of the Budget, to the Secretary, Health, Education, and Welfare, dated December 23, 1954), the Secretary of Education is required to establish a review committee to advise the Secretary concerning any legislation that may be proposed which would authorize the granting of degrees by a Federal agency. The review committee forwards its recommendation concerning a Federal agency's proposed degree-granting authority to the Secretary, who then forwards the committee's recommendation and the Secretary's recommendation to the Office of Management and Budget for review and transmittal to the Congress. The Secretary uses the Advisory Committee as the review committee required for this purpose. Accordingly, the Advisory Committee will review the following institution at its first scheduled meeting in 1994.

Proposed Master's Degree—Granting Authority:

1. School of Advanced Airpower Studies of the Air University, Maxwell Air Force Base, Alabama

The following agencies will be reviewed during the second scheduled meeting of the Advisory Committee in 1994.

Nationally Recognized Accrediting Agencies and Associations:

Petitions for Initial Recognition—

1. American Board for Accreditation in Psychoanalysis (requested scope of recognition: the accreditation of postgraduate certificate programs in psychoanalysis)
2. American Polygraph Association (requested scope of recognition: the accreditation of schools teaching polygraphy or forensic psychophysiology education programs)
3. National Environmental Health Science and Protection Accreditation Council (requested scope of recognition: the accreditation of baccalaureate programs in environmental health science and protection)
4. Planning Accreditation Board (requested scope of recognition: the accreditation of programs leading to bachelor's and master's degrees in planning)

Petitions for Renewal of Recognition—

1. Accrediting Council for Continuing Education and Training, Accrediting Commission (requested scope of recognition: the accreditation of non-collegiate continuing education institutions and programs)
2. National Home Study Council, Accrediting Commission (requested scope of recognition: the accreditation of home study schools [including associate, baccalaureate, or master's degree-granting home study schools])
3. Transnational Association of Christian Schools, Accrediting Commission (requested scope of recognition: the accreditation of Christian postsecondary institutions whose missions are characterized by a belief in Biblical inerrancy, Bible authority, and the historicity of the first eleven chapters of Genesis and that offer certificates, diplomas, and/ or associate, baccalaureate, and/or graduate degrees)

Interim Reports—

1. American Bar Association, Council of the Section of Legal Education and Admissions to the Bar
2. American Optometric Association, Council on Optometric Education
3. American Psychological Association, Committee on Accreditation

4. American Veterinary Medical Association, Committee on Veterinary Technician Education and Activities
5. American Veterinary Medical Association, Council on Education
6. Association of Collegiate Business Schools and Programs
7. Commission on Opticianry Accreditation
8. New England Association of Schools and Colleges, Inc.
9. North Central Association of Colleges and Schools, Commission on Institutions of Higher Education
10. North Central Association of Colleges and Schools, Commission on Schools
11. Northwest Association of Schools and Colleges, Commission on Colleges
12. Society of American Foresters
13. Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges

State Agencies Recognized for the Approval of Public Postsecondary Vocational Education:

Petitions for Renewal of Recognition—

1. Oklahoma State Board of Vocational and Technical Education
2. Oklahoma State Regents of Higher Education

Public Inspection of Petitions and Third-Party Comments:

All petitions and interim reports, and those third-party comments received in advance of the meeting at which an agency or institution will be reviewed will be available for public inspection at the U.S. Department of Education, ROB-3, room 3036, 7th and D Streets, SW., Washington, DC 20202-5171 between the hours of 8 a.m. and 4:30 p.m., Eastern time, Monday through Friday.

Dated: November 30, 1993.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 93-29878 Filed 12-7-93; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Wetland Involvement for Remedial Actions at the Department of Energy's Fernald Environmental Management Project

AGENCY: Department of Energy (DOE)

ACTION: Notice of wetland involvement.

SUMMARY: DOE proposes to conduct various remedial actions at the Fernald Environmental Management Project, located 18 miles northwest of downtown Cincinnati, Ohio. The proposed activities are:

- Interim Remedial Action for Production Area Contaminated Structures, Operable Unit 3,
- Remedial Actions for Silos 1–4, Operable Unit 4,
- Vitrification Pilot Plant, Operable Unit 4.

These activities may involve wetland areas. In accordance with 10 CFR 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements, DOE will prepare the respective wetland assessment for each activity. The proposed activities would be performed in such a manner so as to avoid or minimize potential harm to or within the affected wetland areas. Maps and further information are available from DOE at the address below.

DATES: Comments are due to the address below by December 23, 1993.

ADDRESSES: Mail comments and requests for maps or further information about this project to: Mr. Wally Quaider, Assistant Manager, Technical Support, Fernald Field Office, U.S. Department of Energy, P.O. Box 398704, Cincinnati, Ohio 45239-8704. Fax comments to: (513) 648-3077.

FOR FURTHER INFORMATION CONTACT: For further information on general DOE floodplain and wetlands environmental review requirements, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight, EH-25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4600 or (800) 472-2756.

SUPPLEMENTARY INFORMATION: The proposed actions would reduce or eliminate risks to human health and the environment through:

(1) Decontaminating and dismantling former production facilities and above-grade and below-grade improvements within Operable Unit 3 to manage the potential threat of release;

(2) Removing, treating, and disposing of Silos 1–4 contents, structures, and berms; and

(3) Constructing a pilot plant to evaluate, select, and provide design information on treatment alternatives.

Interim Remedial Action for Contaminated Structures

The interim remedial action associated with Operable Unit 3 involves the former Production Area and affiliated production facilities and equipment. The major concern is potential exposures to human health and the environment associated with the facilities remaining in their current condition under the existing restoration schedule. The proposed activity involves component and gross material decontamination and dismantlement and interim storage of generated wastes. Approximately 1.2 acres of wetlands on the perimeter of Operable Unit 3 may be affected. Potential wetland impacts could occur from construction equipment movement near drainageways and stockpiled soil from subgrade removal and decontamination activities, resulting in the possible destruction of or sediment deposition into the wetland areas. Potentially impacted wetland areas consist of man-made drainageways with minimal quality habitat.

Remedial Actions for Silos 1–4

Remedial activities associated with Operable Unit 4 (Silos 1–4) may necessitate construction of an access road over a 0.52-acre wetland consisting of a drainage ditch. If the access road is needed to access the site for a proposed disposal facility, a portion of the drainage ditch (20 feet wide) would be permanently filled.

Vitrification Pilot Plant

The primary goal of the Operable Unit 4 pilot plant is to demonstrate and confirm the proposed technology (vitrification) for remediating Silos 1–4 contents. Activities would involve two phases. Phase I is to construct and operate a system on a surrogate material (sand and bentonite) to ensure all unit operations function safely before processing the K-65 (Silos 1 and 2) residues. Phase II of the project would demonstrate vitrification capability on actual K-65 material from Silos 1 and 2 but would not impact any wetlands. Phase I would involve construction activities, i.e., installation of three roadways that may impact a 0.15-acre wetland area east of the K-65 Silos.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022), DOE will prepare a wetland assessment for each proposed activity, which will be included in the respective documents being prepared for each of the proposed activities in accordance with the requirements of the National Environmental Policy Act.

Issued in Washington, DC, this 30th day of November 1993.

James J. Fiore,

Director, Office of Eastern Area Programs, Office of Environmental Restoration.

[FR Doc. 93-29941 Filed 12-7-93; 8:45 am]

BILLING CODE 6450-01-P

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration.

ACTION: Notice of request submitted for expedited review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each energy contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: DOE has requested expedited OMB approval by December 10, 1993. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration, Office of Oil and Gas
2. EIA–800, 804–810, 807, 810–814, 816, 817, 819A, 819M, 820, and 825
3. 1905–0165
4. Petroleum Supply Reporting System
5. Revision
6. Triennially
7. Mandatory
8. Businesses or other for-profit; Federal agencies or employees
9. 3,506 respondents
10. 15.18 responses
11. 1.14 hours per response
12. 60,680 hours
13. The Petroleum Supply Reporting System collects information needed for determining the supply and disposition of crude petroleum, petroleum products, and natural gas liquids. These data are published by the EIA. Respondents are producers of oxygenates, operators of petroleum refining facilities, blending plants bulk terminals, crude oil and product pipelines, natural gas plant facilities, tankers and barges, and oil importers. The modifications proposed are the discontinuance of EIA–818, Monthly International Energy Agency Imports/Stocks-At-Sea Report, and EIA–822A–D, Oxygenate Operations Identification Survey, and the addition of two data cells previously collected on EIA–822A–D on fuel ethanol production and stocks to the EIA–819A, Annual Oxygenate Capacity Report. A copy of the revised Form EIA–819A and instructions is included with this notice.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), which amended Chapter 35 of Title 44 United States Code. (See 44 U.S.C. 3506(a) and (c)(1).)

Issued in Washington, DC, December 3, 1993.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

BILLING CODE 6450–01–M

EIA-819A (Revised 01/94)

Energy Information Administration
U.S. DEPARTMENT OF ENERGY
Petroleum Supply Reporting System

Form Approved
OMB No. 1905-0165
Expiration Date: 01/31/96

ANNUAL OXYGENATE CAPACITY REPORT
FORM EIA-819A

This report is mandatory under Public Law 93-275. For the provisions concerning the confidentiality of information and sanctions, see Sections VI and VII of the instructions. Public reporting burden for this collection of information is estimated to average 1 hour and 15 minutes per response, including the time of reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Energy Information Administration, Office of Statistical Standards EI-73, 1000 Independence Ave. SW, Washington, DC 20585; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Survey forms can be submitted by either mail or facsimile following the steps in Section IV of the survey instructions.

RESPONDENT IDENTIFICATION

Reporting Company Name

Street/RFD/PO Address

City State Zip Code

Enter the name of the reporting company. Address information is required ONLY if you are reporting a change.

Plant Name _____ EIA ID Number ☐☐☐☐☐☐☐☐☐☐

Report Period: Year - 1994 If a resubmission, insert X in the block ☐

1 Production Capacity (Barrels per Day)

Product	Code	January 1, 1994 Operating	January 1, 1994 Idle	January 1, 1995 Projected
Fuel Ethanol	141			
Ethyl tertiary butyl ether (ETBE)	142			
Methanol	143			
Methyl tertiary butyl ether (MTBE)	144			
Tertiary amyl methyl ether (TAME)	145			
Tertiary butyl alcohol (TBA)	146			
Other Oxygenates* (specify)	444			

* Other aliphatic alcohols and aliphatic ethers intended for motor gasoline blending.

2 Fuel Ethanol Production and Stocks (Thousand Barrels)

Product	Code	1993 Actual Production	Stock Level as of December 31, 1993
Fuel Ethanol	141		

Comments: Identify any unusual aspects of your report year's operations.

Name of person to contact regarding this report (please print)

Telephone Number (AC) ( ) Ext.

CERTIFICATION: I certify that the information provided herein and appended hereto is true and accurate to the best of my knowledge.

Name (please print) _____ Title _____

Signature _____ Date _____

Title 18, U.S.C. 1001 makes it a crime for any person knowingly and willingly to make to any Agency or Department of the United States any false, fictitious or fraudulent statements as to any matter within its jurisdiction.

EIA-819A (Revised 01/94)

Form Approved
O.M.B. No. 1905-0165
Expiration Date: 01/31/96

Energy Information Administration
U.S. DEPARTMENT OF ENERGY
Petroleum Supply Reporting System

ANNUAL OXYGENATE CAPACITY REPORT FORM EIA-819A INSTRUCTIONS

For help in completing this form, please contact the Form EIA-819A Project Manager at (202) 586-8384.

I. PURPOSE

The Energy Information Administration (EIA) Form EIA-819A, "Annual Oxygenate Capacity Report," is used to collect data on current and projected production capacities and annual production and end-of-year inventories for fuel ethanol of all facilities that produce or distill oxygenates pursuant to Section 13(b) of the Federal Energy Administration (FEA) Act of 1974, Public Law 93-275.

The data appear in the annual Energy Information Administration (EIA) publication, *Petroleum Supply Annual.*

II. WHO MUST SUBMIT

The Form EIA-819A, "Annual Oxygenate Capacity Report," must be completed by the operators of all operating and idle facilities that produce or distill oxygenates (including fuel-grade ethanol producers, MTBE plants, petrochemical plants and refineries that produce oxygenates as part of their operations), and new plants under construction located in the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam and other U.S. possessions.

III. WHEN TO SUBMIT

The Form EIA-819A must be mailed (postmarked) to the EIA by the 15th day of February of the report year.

IV. WHERE TO SUBMIT

Survey forms can be submitted by either mailing to the address listed below or by using facsimile equipment. **Respondents submitting data by telephone are required to follow-up with a certified submission.**

Mail:

Energy Information Administration
Mail Station BG-094 Forrestal
U.S. Department of Energy
Washington, DC 20585

Facsimile:

Equipment:	**Hewlett Packard FAX 310**
Compatibility:	**1, 2, and 3**
Receiving Speed(s):	**30 secs. to 6 mins.**
Telephone Nos.:	**(202) 586-6323**
	(202) 586-6410
Verification Nos.:	**(202) 586-6214**
	(202) 586-3219

To ensure receipt of complete legible data, companies should call the verification numbers upon completion of transmission and obtain the name of the person who verified receipt of their data.

V. FORM COMPLETION PROCEDURES

A. RESPONDENT IDENTIFICATION/ REPORT PERIOD

Respondent Identification

Enter the name of the reporting company. Address information is required only if there has been a change.

Plant Name/EIA Identification (ID) Number

Enter the name of the plant.

Enter the 10-digit EIA ID Number. If you do not have a number, submit your report leaving this field blank. EIA will advise you of the number.

Resubmission

Resubmissions are required whenever an error greater than 5 percent of the true value is discovered by a respondent or if requested by the EIA.

Enter "X" in the resubmission block if you are correcting information previously reported.

Identify only those data cells and lines which are affected by the changes. You are not required to file a complete form when you resubmit, but be sure to complete the EIA ID number, contact information and certification blocks.

B. OXYGENATE ACTIVITY

Definitions of petroleum products and other terms are provided for your use. Please refer to these definitions before completing the survey form.

Production Capacity

Report all quantities to the nearest whole number in barrels per day (42 U.S. gallons/barrel).

Report the maximum amount of product that can be produced at this facility that is intended for blending into motor gasoline. Fuel ethanol production capacity represents the peak sustainable capacity of the facility and should take into account limitations such as the capacity to dehydrate and purify.

Production Capacity is defined as:

Operating Capacity - capacity in operation as of January 1.

Idle Capacity - capacity not in operation and not under active repair, but capable of being placed in operation within 30 days; or capacity not in operation but under active repair which can be completed in 90 days.

The total capacity for an individual unit must be either idle or operating on January 1 of the current report year. Do not report percentages of capacity as operating and idle based on production.

Projections of production capacity for next year should include operating, idle, and any additional capacities slated for completion as of January of the next year.

Do not include as independent capacities the amount of oxygenates produced as byproducts of other processes. For example, if a byproduct (e.g., TAME or TBA) is produced when producing MTBE, include the byproducts in the production capacity for MTBE.

Facilities with the capability of switching production between similar oxygenates should report the production capacity of the oxygenate being produced as of January 1 as operating. The production capacity of the oxygenate not being produced as of January 1 should be reported as idle. Please note this capability in the Comments section of the form.

Fuel Ethanol Production and Stocks

Report all quantities to the nearest whole number in thousand barrels (42 U.S. gallons/barrel). Quantities ending in 499 or less are rounded down, and quantities ending in 500 or more are rounded up (e.g., 106,499 barrels are reported at 106 and 106,500 barrels are reported as 107).

Report stocks of oxygenates in the custody of the facility regardless of ownership. Include stocks in aboveground and underground storage as well as rail cars associated with the facility. Exclude inventories in leased tankage at other facilities. Reported stock quantities should represent actual measured inventories where an actual physical measurement is possible.

Report all domestic and foreign stocks held in pipelines and working tanks and in transit thereto, except those in transit by pipelines which you do not operate. Include foreign stocks only after entry through Customs. Exclude stocks of foreign origin held in bond.

For purposes of this report, "entry through Customs" is said to occur on:

the "entry date" specified on the U.S. Customs Form 7501, "Entry Summary;" or

the "import date" specified on the U.S. Customs Form 214, "Application for Foreign Trade Zone Admission and/or Status Designation;" or

the "date of withdrawal" specified on the U.S. Customs Form CF 7505, "Warehouse Withdrawal for Consumption;" or

the "date of withdrawal" specified on the U.S. Customs Form CF 7506, "Warehouse Withdrawal Conditionally Free of Duty, and Permit;" or

the "date of exportation" specified on the U.S. Department of Commerce Form 7525-V, "Shipper's Export Declaration," for shipments from Puerto Rico to the 50 States and the District of Columbia.

C. COMMENTS

Explain any unusual or substantially different aspects of your report year's operations that affect the data reported.

D. CONTACT INFORMATION AND CERTIFICATION BLOCKS

Enter the name and telephone number of the person to be contacted for further information regarding this form. Check the box provided if the contact name and/or telephone number are different from those shown on the report for the preceding year.

Enter the name and title of the individual your company has designated to certify the accuracy of the data.

Sign the "certification" block and enter the current date.

VI. PROVISIONS REGARDING CONFIDENTIALITY OF INFORMATION

The Office of Legal Counsel of the Department of Justice concluded on March 20, 1991, that the Federal Energy Administration Act requires the Energy Information Administration to provide company-specific data to the Department of Justice, or to any other Federal agency when requested for official use, which may include enforcement of Federal law. The information contained on this form may also be made available, upon request, to another component of the Department of Energy (DOE), to any Committee of Congress, the General Accounting Office, or other Congressional agencies authorized by law to receive such information. A court of competent jurisdiction may obtain this information in response to an order.

The information on current year production capacity on Form EIA-819A is not considered as confidential and company identifiable data will be published in the *Petroleum Supply Annual.* Projected year production capacity, **fuel ethanol production and end-of-year stocks** on the Form EIA-819A are kept confidential and not disclosed to the public to the extent that it satisfies the criteria for exemption under the Freedom of Information Act (FOIA), 5 U.S.C. §552, the DOE regulations, 10 C.F.R. §1004.11, implementing the FOIA, and the Trade Secrets Act, 18 U.S.C. §1905.

Upon receipt of a request for this information under the FOIA, the DOE shall make a final determination whether the information is exempt from disclosure in accordance with the procedures and criteria provided in the regulations. To assist us in this determination, respondents should demonstrate to the DOE that, for example, their information contains trade secrets or commercial or financial information whose release would be likely to cause substantial harm to their company's competitive position. A letter accompanying the submission that explains (on an element-by-element basis) the reasons why the information would be likely to cause the respondent substantial competitive harm if released to the public would aid in this determination. A new justification does not need to be provided each time information is submitted on the form, if the company has previously submitted a justification for that information and the justification has not changed.

VII. SANCTIONS

The timely submission of Form EIA-819A by those required to report is mandatory under Section 13(b) of the Federal Energy Administration Act of 1974 (FEAA) (Public Law 93-275), as amended. Failure to respond may result in a civil penalty of not more than $2,500 for each violation, or a fine of not more than $5,000 for each willful violation. The government may bring a civil action to prohibit reporting violations which may result in a temporary restraining order or a preliminary or permanent injunction without bond. In such civil action, the court may also issue mandatory injunctions commanding any person to comply with these reporting requirements.

[FR Doc. 93-29940 Filed 12-7-93; 8:45 am]
BILLING CODE 6450-01-C

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration.

ACTION: Notice of requests submitted for view by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The first energy information collection submitted to OMB for review was.

1. Federal Energy Regulatory Commission
2. FERC–597
3. 1902–0163
4. Customer Satisfaction Survey
5. Revision
6. On Occasion
7. Voluntary
8. Businesses or other for-profit; Small businesses or organizations
9. 100 respondents
10. 1 response
11. .15 hours per response
12. 15 hours
13. The Federal Energy Regulatory Commission is conducting a voluntary survey of the services performed by its staff in the Public Reference Room. The Commission is requesting that the public evaluate the services provided by its staff and to indicate if changes are necessary to improve the current services.

The second energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–542A
3. 1902–0129
4. Gas Pipeline Rates: Tracking and Recovery of Alaska Natural Gas Transportation System (ANGTS) Charges
5. Extension
6. On occasion; Other (Standby Authority)
7. Mandatory
8. Businesses or other for-profit
9. 1 respondent
10. 1 response
11. 1 hour per response
12. 1 hour
13. Pursuant to Section 9 of the Alaska Natural Gas Transportation Act and Sections 4,5, and 16 of the Natural Gas Act, the Commission requires these data to determine if the ANGTS' rates and charges comply with these requirements.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), which amended Chapter 35 of Title 44 United States Code (See 44 U.S.C. 3506(a) and (c)(1).)

Issued in Washington, DC, December 2, 1993

Yvonne M. Bishop,

Director, Statistical Standards.

[FR Doc. 93–29943 Filed 12–7–93; 8:45 am]

BILLING CODE 6450–01–M

Guidelines for Voluntary Reporting of Greenhouse Gas Emissions and Reductions, and Carbon Sequestration

AGENCY: Office of Policy, Planning, and Program Evaluation, DOE.

ACTION: Notice of public meeting.

SUMMARY: A public workshop and meeting on industrial sector issues in the development of a voluntary reporting program for greenhouse gas emissions, reductions and carbon sequestration will be held by the DOE Office of Policy, Planning and Program Evaluation. This is the sixth and final workshop in a series intended to facilitate preparation of the guidelines for the reporting program.

DATES AND ADDRESSES: The industrial sector workshop will be held December 16, 1993 at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202. The workshop will begin at 8:30 a.m. and adjourn at 5 p.m.

FOR FURTHER INFORMATION CONTACT: To obtain more information on the workshop call Ms. Debbie Stowell at (202) 586–7767. To obtain a copy of the Options Identification Document regarding the industrial sector, call (202) 646–7896. Copies of the document will be available approximately one week before the workshop.

SUPPLEMENTARY INFORMATION: On July 27, 1993, DOE requested comment on the initial development stage of the guidelines for voluntary reporting, under section 1605(b) of the Energy Policy Act of 1992, of greenhouse gas emissions and their reductions and carbon fixation (58 FR 40116). For a more detailed discussion of issues in the development of the guidelines, the reader is referred to the discussion in the July 27 notice. As part of the guideline development process, DOE is hosting a series of public workshops and meetings.

It is anticipated that the workshop on industrial issues will focus on institutional and technical issues related to:

- Energy efficiency improvements and energy use reductions;
- Fuel switching;
- Co-generation and self-generation;
- Direct control of combustion emissions;
- Non-combustion CO_2 emissions;
- Methane sources including landfills, coal mining and natural gas systems;
- Nitrous oxide sources;
- Halogenated substances; and
- Recycling.

For each of these topics, a panel of invited participants will address issues

and options identified in the Options Identification Document and discuss these with other workshop participants. There will be an opportunity for brief oral statements from the public on the issues under consideration during the day's session.

The goal of the workshop is to develop the fullest information on alternative options, not to reach any concensus of opinion nor to make collective recommendations.

Abraham E. Haspel,

Deputy Assistant Secretary, Economic and Environmental Analysis, Office of Policy, Planning and Program Evaluation.

[FR Doc. 93-29942 Filed 12-7-93; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP94-95-000, et al.]

KN Wattenberg Transmission Limited Liability Company, et al.; Natural Gas Certificate Filings

November 30, 1993.

Take notice that the following filings have been made with the Commission:

1. K N Wattenberg Transmission Limited Liability Co.

[Docket No. CP94-95-000]

Take notice that on November 19, 1993, K N Wattenberg Transmission Limited Liability Company (K N Wattenberg), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP94-95-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install a new delivery point, under K N Wattenberg's blanket certificate issued in Docket No. CP92-203-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

K N Wattenberg proposes to install and operate a new tap and valve setting which will be used as a delivery point under an existing transportation agreement with Associated Natural Gas, Inc. (Associated) in Weld County, Colorado.

K N Wattenberg states that the projected peak day delivery at the proposed point would be 8,000 MMBtu. K N Wattenberg states further that the cost of the facilities is estimated to be $20,000 and that K N Wattenberg would be reimbursed for the cost of the facilities by K N Front Range Gathering Company.

Comment date: January 14, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. Trunkline Gas Co.

[Docket No. CP94-100-000]

Take notice that on November 22, 1993, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP94-100-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate an existing delivery point, constructed pursuant to Section 311 of the Natural Gas Policy Act, as a jurisdictional facility under Trunkline's blanket certificate issued in Docket No. CP83-84-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Trunkline proposes to convert the delivery facilities, located in Marshall County, Indiana, to jurisdictional facilities in order to utilize the facilities for transportation service which would be provided under Trunkline's blanket transportation certificate. Trunkline states that the facilities were originally constructed to provide transportation service to Crossroads Pipeline Company. Trunkline further states that the maximum capacity of the facilities is 300,000 Mcf per day. Trunkline does not propose to construct any facilities herein, it is stated.

Trunkline asserts that the change in authorization is requested in order to increase flexibility for the use of the delivery facilities by Trunkline's customers in the selection of transportation services.

Comment date: January 14, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. ANR Pipeline Co.

[Docket No. CP94-108-000]

Take notice that on November 24, 1993, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP94-108-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas transportation services for Northern Natural Gas Company (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that by orders issued in Docket Nos. CP80-119, CP80-213, CP80-309 and CP80-209-000, 001 and 002, ANR was authorized, pursuant to agreements designated as Rate Schedules X-104, X-108, X-119, and X-123 respectively, to transport natural gas for Northern from various receipt points in Louisiana and redeliver the gas for the account of Northern at various delivery points in Louisiana and Kansas.

It is said that as a result of Northern's restructuring under Order No. 636, Northern no longer requires the transportation services provided by ANR under Rate Schedules X-104, X-108, X-119 and X-123 and therefore the agreements have been terminated pursuant to mutual written agreement of the parties. ANR requests that the abandonments be made effective August 1, 1993.

No facilities are proposed to be abandoned herein.

Comment date: December 21, 1993, in accordance with Standard Paragraph F at the end of this notice.

4. Natural Gas Pipeline Co. of America

[Docket No. CP94-104-000]

Take notice that on November 23, 1993, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP94-104-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the firm transportation service to ANR Pipeline Company (ANR) which was authorized in Docket No. CP81-195-000 and allow Natural and ANR to make up any imbalances from such service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Natural proposes to abandon the firm transportation service for ANR under Natural's Rate Schedule X-123, which was authorized in Docket No. CP81-195-000, and allow Natural and ANR to make up any imbalances from such service, at other more convenient interconnections located on their systems or at existing interconnections specified in other agreements between the parties, or alternatively, by offsetting such imbalances among each other or with imbalances under other transportation and/or exchange agreements between the parties.

Natural states that ANR had made available on a firm basis up to 3,900 Mcf of gas per day to Natural at the existing subsea tap of the U-T Offshore System (UTOS) in West Cameron Block 116, offshore Louisiana. Applicant then redelivered equivalent volumes by displacement via UTOS to ANR in West Cameron Block 167, offshore Louisiana where ANR's offshore system interconnects with the UTOS system.

It is stated that the parties have agreed to terminate the service and Natural's Rate Schedule X–123, effective December 1, 1993.

Comment date: December 21, 1993, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29876 Filed 12–7–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–102–000, et al.]

Kern River Gas Transmission Co., et al.; Natural Gas Certificate Filings

December 1, 1993.

Take notice that the following filings have been made with the Commission:

1. Kern River Gas Transmission Co.

[Docket No. CP94–102–000]

Take notice that on November 23, 1993, Kern River Gas Transmission Company (Kern River), P. O. Box 2511, Houston, Texas 77252, filed in Docket No. CP94–102–000 a request pursuant to § 157.205 of the Commission's Regulations to operate an existing delivery point facilities initially constructed under Section 311 (a) of the Natural Gas Policy Act of 1978 (NGPA) for Southwest Gas Corporation (Southwest), a local distribution company, under Kern River's blanket certificate issued in Docket No. CP89–2048–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Kern River proposes to operate the Lone Mountain delivery point in Clark County, Nevada consisting of a 12-inch tap, meter station and appurtenant facilities to provide service for Southwest and other Kern River shippers under its various part 284 firm and interruptible transportation rate schedules and its part 284, subpart G blanket transportation certificate issued in Docket No. CP89–2047. Kern River indicates that it commenced construction of the Lone Mountain delivery point for Southwest in September 1993, under Section 311 (a) of the NGPA and that Kern River would commence Section 311 (a) transportation service to Southwest, in December 1993, under Rate Schedule KRF–1 for Southwest's system supply. Kern River states that all volumes delivered to the Lone Mountain delivery point would be within its nominal design capacity of 70,000 Mcf per day. Kern River states that it does not know the impact, if any, which deliveries to the Lone Mountain delivery point would have upon Kern River's peak day and annual deliveries.

Comment date: January 18, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. Transcontinental Gas Pipeline Corp.

[Docket No. CP94–109–000]

Take notice that on November 29, 1993, Transcontinental Gas Pipe Line Corporation ("TGPL" or "Applicant"), Post Office Box 1396, Houston, Texas 77251, filed an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing TGPL's 1995/1996 Southeast Expansion Project ("SE95/96"), including:

(i) Authorization to construct and operate certain pipeline facilities on TGPL's main line pipeline system on a phased basis in order to create additional firm transportation capacity of the dekatherm equivalent of 115,000 Mcf of gas per day in 1995 ("Phase I") and 50,000 Mcf/d in 1996 ("Phase II"), for a total of 165,000 Mcf/d,

(ii) Approval of TGPL's phased initial rates for the firm transportation service to be rendered through such incremental firm transportation capacity, and

(iii) Approval of the total project on an expedited basis so that TGPL may construct the Phase I facilities and place them into service by November 1, 1995.

TGPL states that this incremental capacity will extend from the point of interconnection between TGPL's main line and its Mobile Bay Lateral near Butler, Alabama, to certain points of delivery upstream of TGPL's Station No. 165 near Chatham, Virginia.

TGPL states that in order to create the 165,000 Mcf/d of firm transportation capacity under SE95/96, it proposes to construct and operate the following facilities on its main line:

Phase I Facilities (115,000 Mcf/d)

1. 12,600 horsepower compressor addition at TGPL's Station No. 90 in Marengo County, Alabama.

2. Two 7,000 horsepower electric driver installations to replace two existing 5,620 horsepower steam turbines on Units 1 and 2 at TGPL's Station No. 100 in Chilton County, Alabama, to obtain a net increase of 2,760 horsepower at this station.

3. 15.13 miles of 42-inch Main Line "E" pipeline loop beginning at milepost 890.61 and ending at milepost 905.74 in Chilton and Autauga Counties, Alabama.

4. Modifications to existing compressor equipment at TGPL's

Station No. 110 in Randolph County, Alabama to eliminate or modify current air permit restrictions, thereby allowing increased annual operating hours. No increase in rated horsepower is proposed. Equipment retrofitting to reduce Nox emissions may be required.

5. 12,000 horsepower compressor addition at TGPL's Station No. 120 in Henry County, Georgia.

6. 12,600 horsepower compressor addition at TGPL's Station No. 150 in Iredell County, North Carolina.

Phase II Facilities (50,000 Mcf/d)

1. 6,500 horsepower compressor addition at TGPL's Station No. 100 in Chilton County, Alabama.

2. 12,000 horsepower compressor addition at TGPL's Station No. 120 in Henry County, Georgia. TGPL states that the construction and operation of the proposed facilities will have no significant impact on the quality of human health or the environment. The proposed facilities will be installed entirely within or immediately adjacent to existing rights-of-way and compressor station yards. TGPL further states that on September 28, 1993, it announced an open season from September 29 to October 20, 1993, during which it received requests for firm transportation service through the 165,000 Mcf/d of firm transportation capacity to be made available by SE95/96. As a result of the open season, TGPL executed precedent agreements with 18 shippers fully subscribing this firm transportation capacity. TGPL states that the SE95/96 firm transportation services will be rendered under TGPL's Rate Schedule FT and part 284(G) of the Commission's regulations, and, therefore, the SE95/96 services will be subject to the terms and conditions of TGPL's tariff as modified pursuant to Order Nos. 636, 636–A and 636–B. TGPL states that the initial rate for the firm transportation services rendered during Phase I (115,000 Mcf/d) will be a monthly reservation rate of $11.52 per Mcf.

When Phase II service begins, the initial rate for all firm transportation services under SE95/96 (165,000 Mcf/d) will be a monthly reservation rate of $9.86 per Mcf. These rates are based on the straight fixed-variable rate design methodology, with an incremental cost of service for Phase I and with the costs of service of Phases I and II being combined into a single, incremental cost of service commencing with Phase II service. The SE95/96 shippers will also be charged the electric power unit rate, fuel retention factor, ACA and GRI surcharges and any other applicable charges under Rate Schedule FT. The electric power unit rate and fuel retention will be TGPL's system rate for Rate Zones 4 and/or 5, depending on the location of the shipper's receipt and delivery points.

Comment date: December 22, 1993, in accordance with Standard Paragraph F at the end of this notice.

3. Natural Gas Pipeline Company of America

[Docket No. CP94–105–000]

Take notice that on November 24, 1993, Natural Gas Pipeline Company of America (Natural) 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP94–105–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon, effective December 1, 1993, sales and delivery services that were authorized on behalf of two industrial end-users, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Natural proposes to abandon the interruptible sales and delivery service it was authorized to provide to Northern Gravel Company (Northern Gravel) in Muscatine County, Iowa; and the sales and delivery service it was authorized to provide to Rocking "R" Drilling and Production Company (Rocking "R" Drilling) in Montague County, Texas. It is stated that after December 1, 1993, Northern Gravel will be purchasing and taking delivery of natural gas from Eastern Iowa Light and Power Company, thereby not requiring the service that Natural is proposing to abandon herein. It is further stated that Rocking "R" Drilling has not purchased gas from Natural since January, 1993, because it is now relying on electric to perform those functions previously performed by gas.

No facilities are proposed to be abandoned herein.

Comment date: December 22, 1993, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29909 Filed 12–7–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. AI93–4–001]

Accounting for Post-Retirement Benefits Other Than Pensions; Order on Rehearing and Clarification

Issued December 1, 1993.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

On June 4, 1993, Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (hereinafter the Columbia Companies) filed a request for rehearing or clarification of a letter ruling issued by the Commission's Chief Accountant on May 7, 1993. The Chief Accountant's letter provided accounting guidance to public utilities, licensees, and natural gas companies on the accounting for and financial reporting of the cost of post-retirement benefits other than pensions (PBOP) under the Commission's Uniform Systems of Accounts. As discussed below, the Commission is denying the application for rehearing, and granting in part the request for clarification.

Background

In December 1990, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standard No. 106, Employers' Accounting for Post-Retirement Benefits Other Than Pensions (SFAS 106). This Statement finds that PBOP plans are deferred compensation arrangements whereby an employer promises to exchange future benefits for employees' current service. SFAS 106 requires that, for fiscal years beginning after December 15, 1992, employers reflect in current expense an accrual for PBOP during the working lives of current employees. SFAS 106, however, encouraged earlier adoption of the standard. Prior to issuance of SFAS 106, most employers accounted for PBOP costs on a "pay-as-you-go" basis.

On December 17, 1992, the Commission issued a Statement of Policy (Policy Statement) at Docket No. PL93-1-000.[1] In that Policy Statement, issued after notice and comment from interested parties, the Commission set forth its policy on rate and accounting treatment of PBOP costs reflecting SFAS 106.

On May 7, 1993, the Chief Accountant issued a guidance letter to all public utilities, licensees, and natural gas companies on the accounting for and financial reporting of the cost of PBOPs under the Commission's Uniform Systems of Account. The Columbia Companies seek rehearing and clarification of portions of the Question and Response Item Nos. 1, 3 and 4 of the guidance letter. These questions and responses address the timing and method[2] for adopting the principles of SFAS 106 for regulatory purposes; the accounting requirements for recognizing a regulatory asset or liability when the SFAS 106 transition obligation or asset is immediately recognized upon adoption of SFAS 106; and the appropriate income and balance sheet accounts to record the amounts required by SFAS 106.

Discussion

1. Question and Response No. 1 of the guidance letter provides as follows:

Question: When should an entity subject to the accounting jurisdiction of the FERC adopt the principles of SFAS 106 in its books of account and in financial statements prepared for regulatory purposes (i.e. FERC Form Nos. 1, 1-F, 2, 2-A, etc.)?

Response: A jurisdictional entity shall adopt the provisions of SFAS 106 for FERC accounting and reporting purposes in the same accounting period and through use of the same method (i.e. immediate or delayed recognition of the transition obligation or asset discussed *infra*) that was used to adopt SFAS 106 in its general purpose financial statements.[3]

[3] If the entity is part of a consolidated group, it shall adopt SFAS 106 for FERC accounting and reporting purposes in the same period and by the same method used in the consolidated financial statements.

The Columbia Companies assert that an entity should not be required to adopt SFAS 106 for regulatory accounting and reporting purposes in the same period or using the same method as it does for financial reporting purposes, as required by the Chief Accountant's guidance letter. They argue that they should be allowed to adopt accounting procedures that are consistent with and better reflect the rate treatment of PBOPs pursuant to the resolution (including settlement) of a rate proceeding initiated under section 4(e) of the Natural Gas Act (NGA).[3] They argue that the regulatory accounting policies that they adopted in years prior to 1993 better reflect their rate case settlement than do the policies dictated in the guidance letter. They argue that they should not be required to make material retroactive adjustments to financial statements or regulatory accounting entries for prior years, and claim that the guidance letter would require that reporting and accounting requirements meet its dictates without regard to the manner in which SFAS 106 issues may have been settled for ratemaking purposes.[4]

The Columbia Companies are wholly-owned subsidiaries of The Columbia Gas System, Inc. which, in its Annual Report to Shareholders, includes financial statements prepared on a consolidated basis for it and its subsidiaries. They are therefore subject to the footnote requirement of Question and Response Item No. 1.[5]

Under section 8 of the NGA,[6] the Commission has the authority to prescribe the manner in which accounts and records are to be maintained by natural gas companies. Further under section 10 of the NGA,[7] the Commission has the authority to prescribe reporting requirements, including reporting of financial data.

Because a jurisdictional entity's financial statements are used for regulatory purposes as well as investment purposes, there should be uniformity and consistency, with limited exceptions,[8] in the manner in which accounting principles are applied by a jurisdictional entity in the preparation of financial statements submitted to the Commission and to shareholders. Without uniformity and consistency, an entity could make different representations—one to the Commission and one to shareholders—that purportedly report the results of operations. Consequently, PBOP costs reflecting SFAS 106 should be accounted for in the same manner in regulatory reports as in reports to shareholders.

[1] Statement of Policy, Post-Employment Benefits Other Than Pensions, 61 FERC ¶ 61,330 (1992).

[2] The term "method" refers to the option selected under the provisions of SFAS 106 for recognizing the transition obligation or asset. In the year of adoption, SFAS 106 permits an entity to either immediately recognize the transition obligation or asset or to recognize the transition obligation or asset on a delayed basis.

[3] 15 U.S.C. 717d (1988).

[4] Request for rehearing, pp. 3-5.

[5] The 1992 Annual Report to Shareholders for the Columbia Gas System, Inc. filed with the Commission indicates that the Columbia Gas System, Inc. and its subsidiaries adopted SFAS 106 (*i.e.*, began using the accrual method to reflect PBOP costs) in the fourth quarter of 1991 retroactive to January 1, 1991 and elected to recognize and record the full amount of the PBOP transition obligation immediately as of that date. However, in Form No. 2 filings made with the Commission, the Columbia Companies disclosed that 11 months later on December 1, 1991, they adopted SFAS 106 for reporting to the Commission, but they are recognizing the PBOP transition obligation on a delayed basis.

[6] 15 U.S.C. 717*i* (1988).

[7] 15 U.S.C. 717k (1988).

[8] In Arkansas Power and Light Company, 41 FERC ¶ 61,034 (1987) and Kansas Gas and Electric Company, 43 FERC ¶ 61,248 (1988), the Commission determined that the books, records, and reports that a utility maintains under the Uniform System of Accounts need not always conform to FASB Statement No. 92, Regulated Enterprises—Accounting for Phase-in Plans (SFAS 92). In the Termination Order of its Notice of Inquiry, Docket No. RM88-22-000, IV FERC Stats. & Regs. ¶ 35,524 (1992), the Commission concluded that SFAS 92 did not reflect the economics of ratemaking and the Commission therefore rejected the suggestion that it adopt SFAS 92 as part of the Uniform System of Accounts. *Id.* at 35,686.

No good reason is presented to except SFAS 106 from the uniformity and consistency objectives of financial reporting. Therefore, the Chief Accountant's requirement that a jurisdictional entity adopt SFAS 106, for financial purposes and reporting to the Commission, in the same accounting period, and make use of the same accounting method for both purposes is reasonable and appropriate.

With respect to the Columbia Companies' concern about the need to restate prior years' financial statements, it was not intended that the Columbia Companies or any other jurisdictional entity be required to apply retroactively the accounting guidance issued in 1993 to prior years nor to restate prior years' financial statements filed with the Commission. Rather, it was expected that the necessary adjustments would be recognized in 1993 to comply with the requirements of the Chief Accountant's guidance letter.

The Columbia Companies' objection to Question and Response Item No. 1 is premised on the notion that the SFAS 106 accounting and reporting directed by the Chief Accountant should be consistent with the ratemaking treatment. Accounting should properly recognize the economic effects of regulation.[9] However, the Columbia Companies should adopt SFAS 106 using uniform accounting principles that are consistent with the Commission's Uniform System of Accounts, and should record the effects of the ratemaking process as a regulatory asset or liability, as appropriate. Question and Response Item No. 4 of the Chief Accountant's May 7, 1993 letter (see *infra*) provides guidance on the appropriate accounting to be followed to recognize the effects of the ratemaking process for SFAS 106 costs.

2. Question and Response Item No. 3 of the guidance letter provides as follows:

Question: If an entity elects to implement SFAS 106 by immediately recognizing the transition obligation or asset, how should it recognize the transition obligation or asset in its books of account on a basis that is consistent with the Commission's USofA?

Response: To the extent that an entity has a regulatory asset or liability resulting from the immediate recognition of the transition obligation or asset, it shall record the amount directly in Account 254, Other Regulatory Liabilities, or Account 182.3, Other Regulatory Assets, as appropriate. In the event the recognition of the transition obligation or asset has an effect on net income, the entity shall report the net income effect of the accounting change as the cumulative effect of a change in accounting principle. [Footnotes omitted.]

The Columbia Companies assert that the guidance letter requires an entity to record a regulatory asset or liability for the transition obligation (or asset) at the time of implementing SFAS 106. They assert that it is possible to interpret this requirement to apply not only for regulatory accounting and reporting purposes, but to financial reporting as well. They ask for clarification that this is not the case.[10]

The guidance letter states that if an entity has a regulatory asset or liability as defined by Order No. 552, such asset or liability shall be recorded in accordance with the accounting requirements of Order No. 552.[11] These requirements apply for Commission accounting and reporting purposes.

3. Question and Response Item No. 4 of the guidance letter provides as follows:

Question: What income statement and balance sheet accounts shall an entity use to record the amounts required by SFAS 106?

Response: An entity shall follow the text of Account 926, Employee Pensions and Benefits, to record net periodic PBOP costs, with appropriate recognition of the amount of net periodic PBOP cost applicable to nonutility operations and construction work in progress. The amount of net periodic PBOP cost representing a regulatory asset or liability shall be recorded in Account 182.3, Other Regulatory Assets, or Account 254, Other Regulatory Liabilities.

An entity shall record PBOP liability in Account 228.3, Accumulated Provision for Pensions and Benefits. In the event an entity's PBOP plan assets do not qualify for offset under SFAS 106, they shall be recorded in Account 128, Other Special Funds. [Footnotes omitted.]

The Columbia Companies assert that they should be allowed to use accounting entries to record the impact of SFAS 106 consistent with, and reflective of, the actual treatment accorded such amounts as a result of an NGA section 4(e) rate case proceeding. They state that the regulatory accounting treatment should reflect and support the ratemaking treatment.[12]

The regulatory accounting treatment should reflect the economic effects of ratemaking. The guidance letter achieves this objective. It establishes uniform accounting requirements for implementation of SFAS 106 to be followed by all public utilities, licensees, and natural gas companies, while at the same time giving appropriate recognition to the effects of regulation through the recognition of resulting regulatory assets and liabilities. Therefore, the Columbia Companies should use accounting entries to record the impact of SFAS 106 consistent with the Policy Statement and the Chief Accountant's guidance letter.

The Commission orders:

(A) The request for rehearing of the Columbia Companies is denied, and clarification is granted as discussed in the body of this order.

(B) The Secretary shall cause this order to be published in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29875 Filed 12–7–93; 8:45 am]

BILLING CODE 6717–01–P

[9] See Notice of Proposed Rulemaking, Revision to Uniform Systems of Accounts to Account for Allowances Under the Clean Air Act Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1–F, 2 and 2–A, Docket No. RM92–1–000, IV FERC Stats. & Regs. ¶ 32,481 at p. 32,584 (1991).

[10] Request for rehearing, p. 5.

[11] III FERC Stats. & Regs., ¶ 30,967 (1993). Order No. 552 prescribed new accounting requirements for assets and liabilities created through the ratemaking actions of regulatory agencies that are not provided for in other accounts.

[12] Request for rehearing, pp. 6–7.

[Docket No. TM94–2–110–001]

Iroquois Gas Transmission System, L.P.; Compliance Filing

December 2, 1993.

Take notice that on November 29, 1993, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets:

First Revised Sheet No. 75
Original Sheet No. 75A
Original Sheet No. 75B

The proposed effective date of these revised tariff sheets is November 1, 1993.

Iroquois states that it is filing the above tariff sheets in compliance with the Letter Order issued by the Commission on October 29, 1993, in Docket No. TM94–2–110–000. Iroquois further states that the tariff sheets contain a proposed new Section 12.3 of the General Terms and Conditions of Iroquois' FERC Gas Tariff, which sets forth in detail its Deferred Asset Surcharge mechanism, in compliance

with the Commission's directive in the October 29, 1993 Letter Order.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before December 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-29910 Filed 12-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-3-110-000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

December 2, 1993.

Take notice that on November 30, 1993, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to be effective January 1, 1994:

Fourth Revised Sheet No. 4
Fourth Revised Sheet No. 5

Iroquois states that the purpose of this filing is to reflect an increase of 13.8 cents per Dth (from 8 cents to 21.8 cents per Dth) in the demand component of Iroquois' Gas Research Institute (GRI) Surcharge and a decrease of 0.62 cents per Dth (from 1.47 cents to 0.85 centers per Dth) in the commodity component of its GRI Surcharge, effective January 1, 1994, in accordance with the funding units approved by the Commission in its Opinion No. 384 issued on October 5, 1993, in Docket No. RP93-140-000, "Opinion and Order Approving Gas Research Institute's 1994 Research, Development and Demonstration Program and Related Five-year Plan for 1994-1998."

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC., 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-29911 Filed 12-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-3-16-000]

National Fuel Gas Supply Corporation; Proposed Changes in FERC Gas Tariff

December 2, 1993.

Take notice that on November 30, 1993, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective on January 1, 1994.

Third Revised Sheet No. 5
Second Revised Sheet No. 6

National states that the purpose of this filing is to revise the GRI unit surcharges authorized by the Commission beginning January 1, 1994 to 21.8¢ and 13.4¢ per Dth for demand/reservation surcharges for "high load factor and low load factor customers and a commodity/usage surcharge of .85¢ per Dth on firm service and one-part interruptible rates.

National states that copies of National's filing were served on National jurisdictional customers and on the interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protest should be filed on or before December 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-29912 Filed 12-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-2-55-000]

Questar Pipeline Company; Proposed Changes in FERC Gas Tariff

December 2, 1993.

Take notice that on November 30, 1993, Questar Pipeline Company (Questar), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, and Original Volume No. 3, the following tariff sheets, with a proposed effective date of January 1, 1994:

Second Revised Sheet No. 5
Second Revised Sheet No. 5A
First Revised Sheet No. 90
Thirteenth Revised Sheet No. 8

Questar states that this filing incorporates into its transportation rates the Gas Research Institute (GRI) rates for the calendar year 1994 and properly state the GRI filing procedures in its General Terms and Conditions.

Questar states that copies of this filing were served upon Questar's jurisdictional customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-29913 Filed 12-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-3-17-000]

Texas Eastern Transmission Corp.; Proposed Changes to FERC Gas Tariff

December 2, 1993.

Take notice that on November 29, 1993, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, tariff sheets listed on Appendix A of the filing, with a proposed effective date of January 1, 1994.

Texas Eastern states that the tariff sheets are being filed pursuant to the Commission's Orders issued on March 22, 1993 and June 23, 1993 approving the Stipulation and Agreement Concerning Post-1993 GRI Funding Mechanism (Settlement) in Docket Nos. RP92-133-000, et al., the Commission's Opinion No. 384 dated October 5, 1993 in Docket No. RP93-140-000 and in accordance with Section 15.4 of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1.

Texas Eastern states that its Rate Schedules FSS-1 and ISS-1 provide for only storage service, and no transportation service is provided under such rate schedules. Fourth Revised Sheet Nos. 46 and 49 are submitted herewith to reflect the deletion of the GRI surcharges in the aforementioned Rate Schedules. The GRI Surcharges will be paid on the transportation of the gas to or from storage as appropriate.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-29914 Filed 12-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-2-42-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 2, 1993.

Take notice that on November 30, 1993, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective January 1, 1994:

104th Revised Sheet No. 5
10th Revised Sheet No. 5A
6th Revised Sheet No. 5A.01
4th Revised Sheet No. 5A.02
4th Revised Sheet No. 5A.03
4th Revised Sheet No. 5A.04
8th Revised Sheet No. 5B
6th Revised Sheet No. 79
Original Sheet No. 79A

On October 5, 1993, the Commission issued Opinion No. 384 in Docket No. RP93-140 in which it approved the Gas Research Institute's (GRI) 1994 Research, Development, and Demonstration Program and Related Five-Year Plan for 1994-1998. This filing establishes revised GRI rates effective January 1, 1994 for Transwestern transportation rates.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-29915 Filed 12-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-60-000]

Transwestern Pipeline Co., Notice of Proposed Changes in FERC Gas Tariff

December 2, 1993.

Take notice that on November 30, 1993, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of January 1, 1994:

105th Revised Sheet No. 5
11th Revised Sheet No. 5A
7th Revised Sheet No. 5A.01
9th Revised Sheet No. 5B
Original Sheet No. 5E(viii)
16th Revised Sheet No. 89
5th Revised Sheet No. 89A
12th Revised Sheet No. 90A

Transwestern seeks to modify its take-or-pay, buy-out and buy-down mechanism (Transition Cost Recovery or TCR mechanism) in order to recover certain take-or-pay settlement, buy-out, buy-down, and contract reformation costs (Transition Costs) which amounts it paid subsequent to the implementation of its Gas Inventory Charge (GIC), October 1, 1989, and which do not qualify under the Litigation Exception provision of its tariff.

Transwestern states that it has paid an additional $2,870,292.64 in Transition Costs (TCR Amount Fourteen) and is revising certain tariff sheets and requesting authority to begin recovery of such amounts under the tariff sheets, pursuant to the Commission's policies in Order Nos. 500 and 528.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-29916 Filed 12-7-93; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4810-9]

Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Contractor TechLaw Inc. and Subcontractor Melanson & Associates, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for comment.

SUMMARY: EPA hereby complies with the requirements of 40 CFR 2.310(h) for authorization to disclose to its contractor, TechLaw, Inc. (hereinafter "TechLaw"), of Lakewood, Colorado and subcontractor Melanson & Associates, Inc., of San Francisco, California, Superfund confidential business information ("CBI") which has been submitted to EPA Region 9, Hazardous Waste Management Division, Office of Superfund Programs.

FOR FURTHER INFORMATION CONTACT: Steve Simanonok, Office of Superfund Programs, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744-2358.

NOTICE OF REQUIRED DETERMINATIONS, CONTRACT PROVISIONS AND OPPORTUNITY TO COMMENT: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, (commonly known as "Superfund") requires the establishment of an administrative record upon which the President shall base the selection of a response action. CERCLA also requires the maintenance of many other records including those relevant to cost recovery. EPA has entered into a contract, No. 68-W0-0001, with TechLaw and its subcontractor Melanson & Associates, Inc., for conversion of these records to optical disk. EPA Region 9 has determined that disclosure of CBI to TechLaw and its subcontractor Melanson & Associates, Inc. employees is necessary in order that TechLaw and Melanson & Associates, Inc. may carry out the work required by that contract with EPA. The contract complies with all requirements of 40 CFR 2.301(h)(2)(ii), incorporated by reference into 40 CFR 2.310(h)(2). EPA Region 9 will require that each TechLaw and subcontractor Melanson & Associates, Inc. employee sign a written agreement that he or she: (1) Will use the information only for the purpose of carrying out the work required by the contract, (2) shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA legal office, and (3) shall return to EPA all copies of the information (and any abstracts or extracts therefrom) upon request from the EPA program office, whenever the information is no longer required by TechLaw and Melanson & Associates, Inc. for performance of the work required by the contract, or upon completion of the contract. These non-disclosure statements shall be maintained on file with the Delivery Order Project Officer. TechLaw and Melanson & Associates, Inc. employees will be trained on Superfund CBI requirements.

EPA hereby advises affected parties that they have ten working days to comment pursuant to 40 CFR 2.301(h)(2)(iii), incorporated by reference into 40 CFR 2.310 (h)(2). Comments should be sent to: Environmental Protection Agency, Region 9, Steve Simanonok (H-7-4), 75 Hawthorne Street, San Francisco, CA 94105.

Dated: November 23, 1993.

David Jones,

Acting Director, Hazardous Waste Management Division, EPA Region 9.

[FR Doc. 93-29896 Filed 12-7-93; 8:45 am]

BILLING CODE 6560-60-M

[FRL-4811-6]

Underground Injection Control Program, Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; BASF Corporation

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on exemption reissuance.

SUMMARY: EPA hereby provides notice it has reissued an exemption to the land disposal restrictions of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act to BASF Corporation (BASF). The reissued exemption allows BASF to inject restricted hazardous waste through a permitted Class I hazardous waste injection well located at Geismar, Louisiana.

DATES: EPA's reissuance action was effective on November 30, 1993.

ADDRESSES: A copy of the reissued exemption, the petition on which it was based, and other pertinent information is on file at the following location: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W-SU), 1445 Ross Avenue, Dallas, TX 75202-2733.

FOR FURTHER INFORMATION CONTACT: Mac Weaver, Chief, UIC State Programs Section, EPA—Region 6, telephone (214) 655-7160.

SUPPLEMENTARY INFORMATION: Pursuant to section 3004 of the Resource Conservation and Recovery Act, 42 U.S.C. 6924, and implementing regulations at 40 CFR part 148, EPA Region 6 issued a "no migration" exemption to BASF on August 7, 1990, thus allowing it to inject restricted hazardous waste via two permitted Class I hazardous waste injection wells in Geismar, Louisiana. On July 7, 1992, BASF petitioned EPA for reissuance of that exemption to remove one of its two wells from the exemption and allow a density range for the injected waste stream.

After reviewing information, including new computer modeling BASF submitted in support of its petition, EPA proposed to reissue the exemption on September 21, 1993. In that notice, EPA solicited written comments on its proposal until November 5, 1993. No comments were received.

On November 30, 1993, EPA Region 6 determined BASF had demonstrated, to a reasonable degree of certainty, that there would be no migration of injected restricted hazardous waste from the injection zone for as long as the waste remains hazardous and thus reissued BASF's exemption.

Myron O. Knudson,

Director, Water Management Division (6W).

[FR Doc. 93-29895 Filed 12-7-93; 8:45 am]

BILLING CODE 6565-60-P

[FRL-4811-4]

Meetings of Committees of the Grand Canyon Visibility Transport Commission

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Notice of meetings.

SUMMARY: The U.S. EPA is announcing a meeting of committees of the Grand Canyon Visibility Transport Commission (Commission). The Commission was established by the EPA on November 13, 1991 (see 56 FR 57522, November 12, 1991).

The meetings will be of the Commission's Alternative Assessment Committee and the Operations Committee in Albuquerque, New Mexico. The Alternatives Assessment

Committee will meet from 1 p.m. on December 13, 1993 through 12 noon on December 15, 1993. A primary purpose of the meeting will be to develop final drafts of proposed emissions management options and a proposed methodology for evaluating these packages. The proposed options and methodology will be the subject of a series of public meetings to be held in the West in January, 1994. In addition, the Alternatives Assessment Committee will address the issue of a future base case emissions inventory and review drafts of a request for proposals for performing the socioeconomic evaluation of emissions management options.

The Operations Committee will meet from 1 p.m. to 5 p.m. on December 15, 1993. The meeting agenda will include adoption of a fiscal year 1994 budget, approval of a future base case inventory methodology, the approval of a mobile source emissions model to be used, and the approval of information to be used in the January public meetings by the Communications Committee.

ADDRESSES: All meetings will take place at the Sheraton Old Town Hotel, 800 Rio Grande Boulevard, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Leary, Project Manager for the Grand Canyon Visibility Transport Commission, Western Governors' Association, 600 17th Street, suite 1705, South Tower, Denver, Colorado 80202; telephone number (303) 623–9378; facsimile machine number (303) 534–7309.

Dated: December 2, 1993.

Ann Goode,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93–29894 Filed 12–7–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4811–3]

Office of Air and Radiation; Management of the Air and Radiation Docket and Information Center

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Air and Radiation Docket and Information Center (formerly known as the Air Docket), located at 401 M Street, SW., Washington, DC 20460, has new hours of operation and a fax line. The Air and Radiation Docket and Information Center will be open Monday through Friday, including all non-government holidays, from 8 a.m. to 4 p.m. The Center will be closed on Saturdays and Sundays and on government holidays. The fax number for the Center is 202–260–4000.

FOR FURTHER INFORMATION CONTACT: The Air and Radiation Docket and Information Center at 401 M Street, SW., Washington, DC 20460. Telephone 202–260–7548 or 202–260–7549.

Jerry Kurtzweg,

Director, Office of Program Management Operations, Office of Air and Radiation.

[FR Doc. 93–29893 Filed 12–7–93; 8:45 am]

BILLING CODE 6560–50–M

[OPP–66187; FRL 4744–8]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by March 8, 1994, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This notice announces receipt by the Agency of requests to cancel some 27 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000100 LA–92–0005	Beacon Herbicide	Methyl 2-[[[[[4,6-bis(difluoromethoxy)-2-pyrimidinylaminocarbonylamino-sulfo
000100 TX–91–0005	Aatrex Nine-0	2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
000264–00436	Can-Trol Herbicide	Sodium 4-(2-methyl-4-chlorophenoxy)butyrate
000270–00181	Fly Stop Sticky Fly Trap	(*Z*)-9-Tricosene
000352–00441	Dupont "Assure" Herbicide	Propanoic acid, 2-(4-((6-chloro-2-quinoxalinyl)oxy)phenoxy)-, ethyl ester
000550–00178	Liquid Bleach Industrial Grade	Sodium hypochlorite
000675–00037	New LF-10 Hospital Disinfectant Concentrate	Tetrasodium ethylenediaminetetraacetate Isopropanol Potassium 2-benzyl-4-chlorophenate *o*-Phenylphenol, potassium salt Sodium dodecylbenzenesulfonate
001258–00886	Olin Pool Chlorine	Potassium dichloro-*s*-triazinetrione

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
001258–00907	Olin Plus Two (TM) Pool Shock Treatment	Sodium dichloro-*s*-triazinetrione
001258–00909	Fast Pace Pool Chlorinating Granules	Trichloro-*s*-triazinetrione
001258–01159	CDB Sani Fizz 25 St	Sodium dichloro-*s*-triazinetrione
001258–01162	CDB Effervescent 25 St	Sodium dichloro-*s*-triazinetrione
001258–01163	CDB Effervescent 25 Lt	Sodium dichloro-*s*-triazinetrione
001258–01164	CDB Sani Fizz 25 Lt	Sodium dichloro-*s*-triazinetrione
005481–00161	Phosdrin 10.3	2-Carbomethoxy-1-methylvinyl dimethyl phosphate, alpha isomer and related
005768–00014	Spur-Tex 816 Granular Chlorinated Sanitizer-Cleaner	Sodium dichloroisocyanurate dihydrate
007176–00023	Butcher's Dimension 256 Disinfectant Non-Alkaline Clean	Alkyl* dimethyl benzyl ammonium chloride *(60%C_{14}, 30%C_{16}, 5%C_{18}, 5%C_{12}) Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%C_{12}, 32%C_{14})
009157–00024	Sun Solar-Clor Pool Chlorinating Granular	Sodium dichloro-*s*-triazinetrione
011556–00015	Co-Ral 1% Cattle Duster	*O,O*-Diethyl *O*-(3-chloro-4-methyl-2-oxo-2*H*-1-benzopyran-7-yl) phosphorothioate
011556–00017	Co-Ral Cattle Duster	*O,O*-Diethyl *O*-(3-chloro-4-methyl-2-oxo-2*H*-1-benzopyran-7-yl) phosphorothioate
011556–00019	Co-Ral Cattle Insecticide 5.0% Dust	*O,O*-Diethyl *O*-(3-chloro-4-methyl-2-oxo-2*H*-1-benzopyran-7-yl) phosphorothioate
011556–00024	Co-Ral Brand of Coumaphos Livestock Duster	*O,O*-Diethyl *O*-(3-chloro-4-methyl-2-oxo-2*H*-1-benzopyran-7-yl) phosphorothioate
011715–00211	Farnam No-Gnaw	Benzyl diethyl ((2,6-xylylcarbamoyl)methyl) ammonium benzoate Essential oils Thymol
028293–00031	Unicorn Propoxur Flea & Tick Spray for Cats & Dogs	*o*-Isopropoxyphenyl methylcarbamate
034704 WA–93–0018	Clean Crop Malathion/Methoxychlor Spray	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
043680–00009	C-960	Sodium dichloroisocyanurate dihydrate
056228 TX–90–0002	Compound DRC-1339 98% Concentrate	3-Chloro-*p*-toluidine hydrochloride

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000100	Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419.
000264	Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27709.
000270	Farnam Companies Inc., 301 W. Osborn Rd, Phoenix, AZ 85013.
000352	E. I. Du Pont De Nemours & Co, Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000550	Van Waters & Rogers, Inc., Subsidiary of Univar, Box 34325, Seattle, WA 98104.
000675	National Laboratories, L & F Products, 225 Summit Ave, Montvale, NJ 07645.
001258	Olin Corp., Box 586, Cheshire, CT 06410.
005481	Amvac Chemical Corp., 4100 E. Washington Blvd, Los Angeles, CA 90023.
005768	Spurrier Chemical Companies Inc., Box 2812, Wichita, KS 67201.
007176	Butcher Co, 120 Bartlett St, Marlborough, MA 01752.
009157	Morgan Gallacher Inc., 8707 Millergrove Dr, Santa Fe, CA 90670.
011556	Miles Inc., Animal Health Division, Box 390, Shawnee Mission, KS 66201.
011715	Speer Products Inc., Box 18993, Memphis, TN 38181.
028293	Unicorn Labs & Phaeton Corp., 1000 118th Ave. N, St. Petersburg, FL 33716.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
034704	Platte Chemical Co., Inc., c/o William M. Mahlburg, Box 667, Greeley, CO 80632.
043680	WEAS Engineering Inc., Box 816, Carmel, IN 46032.
056228	U. S. Dept of Agriculture, Annimal & Plant Health Inspection, Federal Building, Room 533, Hyattsville, MD 20782.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before March 8, 1994. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: November 26, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93-29825 Filed 12-7-93; 8:45 am]

BILLING CODE 6560-50-F

[OPP-34049; FRL 4745-3]

Notice of Receipt of Requests for Amendments to Delete Uses In Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on March 8, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the four pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before March 8, 1994 to discuss withdrawal of the applications for amendment. This 90-day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Registration No.	Product Name	Delete From Label
000264-00263	Florel Brand Plant Growth Regulator	Home grown tomatoes, dwarf mistletoe, leafy mistletoe shoots in ornamentals, elimination of undesirable fruit development on apples, crab apples, carob and olives

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete From Label
000464–00078	Dowicide-A Anti-microbial	Postharvest uses on apples, cantaloupes, carrots, cherries, cucumbers, kiwifruit, kumquats, nectarines, peppers (bell), peaches, pineapples, plums (fresh prunes), sweet potatoes, tomatoes; wood treatment uses on forest products (unseasoned), buildings/products (outdoors), household/domestic (out-doors); aquatic uses
010163–00080	Gowan Azinphos-M2EC	Use on sugarcane in State of Louisiana
034704–00691	Clean Crop Azinphos Methyl 2EC	Use on sugarcane in State of Louisiana

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000264	Rhone-Poulenc, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709.
000464	The Dow Chemical Co., 1803 Building, Midland, MI 48674.
010163	Gowan Company, P.O. Box 5569, Yuma, AZ 85366.
034704	Platte Chemical Co., P.O. Box 667, Greeley, CO 80632.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: November 26, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–29826 Filed 12–7–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–64017; FRL 4742–2]

Grace Sierra Chemical Co., Inc.; Cancellation of Conditional Registration for Milban

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Effective July 29, 1993, the conditional registration was canceled for Milban Fungicide (EPA Registration No. 58185-12) of Grace-Sierra Crop Protection Company, Inc. Grace-Sierra may not sell, or distribute in commerce, any quantity of Milban after the effective date of cancellation. Persons other than Grace-Sierra may only sell or distribute in commerce, with its approved label, existing stocks of Milban for 2 years after the effective date of cancellation. Persons other than Grace-Sierra may only use, in a manner consistent with its approved label, existing stocks of Milban for 2 years after the effective date of cancellation.

DATES: Cancellation of the conditional registration for Milban took effect on July 29, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: Sidney C. Jackson, Acting Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: On May 31, 1993, EPA published a Notice of Intent to Cancel (NOIC), the conditional registration for Milban (EPA Registration No. 58185-12) pursuant to section 6(e)(1)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136d(e)(1)(B). EPA issued the NOIC because Grace-Sierra had failed to fulfill its obligations under the conditional registration to conduct and submit worker exposure studies.

Grace-Sierra filed a timely request for a hearing, objecting to the NOIC. On July 29, 1993, Grace-Sierra withdrew its hearing request and objections. As a result, the registration for Milban was canceled automatically on July 29, 1993, by operation of law. As provided in the NOIC, the following provisions now govern the sale, distribution in commerce, and use of Milban.

Grace-Sierra may not sell, or distribute in commerce any quantity of Milban after July 29, 1993; persons other than Grace-Sierra may only sell, or distribute in commerce, with its approved label, any existing stocks of Milban for 2 years after July 29, 1993; and persons other than Grace-Sierra may only use in a manner consistent with the approved label, existing stocks of Milban for 2 years after July 29, 1993.

Authority: 7 U.S.C. 136d.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: November 15, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–29827 Filed 12–7–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30000/29D; FRL–4650–8]

Inorganic Arsenicals; Conclusion of Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final Determination; Conclusion of Special Review.

SUMMARY: This Notice announces the conclusion of the Special Review for the remaining non–wood preservative uses of the inorganic arsenicals. In 1988, a Notice of Final Determination for most of the non-wood uses was issued. In that Notice, EPA determined to cancel several registrations for inorganic arsenicals, leave two registrations in effect, and defer action on five

remaining uses. Four of the remaining five uses subsequently were canceled. In 1991, the Agency proposed cancellation of the remaining use — arsenic acid on cotton. Subsequently, these registrations also were voluntarily canceled. Since there are no longer any viable registrations for these five uses, EPA is concluding the Special Review.

FOR FURTHER INFORMATION CONTACT: Ann Sibold, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, 3rd floor, Crystal Station Building #1, 2800 Crystal Drive, Arlington, VA. 22202. (703) 308–8033.

SUPPLEMENTARY INFORMATION:

I. Introduction

This Notice concludes the Special Review of the five remaining non-wood preservative uses of the inorganic arsenicals. The Special Review of the inorganic arsenicals began on October 18, 1978, when EPA issued a Notice of Rebuttable Presumption Against Registration (RPAR, now called a Special Review) (43 FR 48267) for the wood preservative and non-wood preservative uses of inorganic arsenicals. The RPAR was triggered by the finding that use of the inorganic arsenicals met or exceeded the risk criteria for carcinogenicity, teratogenicity (developmental effects) and mutagenicity (genetic effects).

1. *Wood preservative uses.* In 1981 (46 FR 13020), EPA proposed changes to the terms and conditions of registration for the wood preservative uses of inorganic arsenicals. These changes were based on an assessment of the risks and benefits of continued registration of inorganic arsenicals as wood preservatives. The Final Determination, issued July 13, 1984, (49 FR 28666), required certain modifications to the terms and conditions of registration and concluded the Special Review for the wood preservative uses of the inorganic arsenicals. Subsequently, EPA received requests for hearings from registrants contesting the requirements of that Notice. EPA considered registrants' suggestions for reaching the goals of the July 13, 1984 Notice, and amended the Notice of Intent to Cancel (51 FR 1334, January 10, 1986). All registrants have either modified their registrations in accordance with the Amended Notice or their registrations were canceled.

2. *Non-wood preservative uses.* On January 2, 1987, EPA issued a Preliminary Determination proposing to cancel the registrations of virtually all of the non-wood preservative uses (the "minor" uses) of inorganic arsenicals (52 FR 132). This action was based on two risk concerns, acute toxicity and carcinogenicity. Acute toxicity had been added as a risk concern after the Special Review was initiated. It was based on a large number of accidental poisonings, particularly of children. The Agency found that the acute risks to children from accidental ingestion of arsenic compounds outweighed the benefits. Carcinogenicity was found to be a risk to workers handling inorganic arsenical pesticides. The Agency found that protective clothing or a restricted use classification would not reduce the risks to an acceptable level in light of the limited benefits. EPA deferred consideration of four inorganic arsenicals — the "major" uses, including arsenic acid on cotton and okra, sodium arsenite on grapes, calcium arsenate on turf, and lead arsenate on citrus—for the following reasons. First, these uses did not pose acute risks, and second, the Agency found it necessary to review further the potential risk from dermal and dietary exposure. In 1988, EPA issued a Final Determination to Cancel products containing inorganic arsenicals for most of the minor uses of inorganic arsenic (53 FR 24767). In this Notice, only two registrations were retained: the insecticidal use of arsenic trioxide in a sealed metal container and the solid formulation of arsenic trioxide used to control moles and gophers. These uses were retained because the products were packaged in a manner that reduced chances of exposure, so that the benefits of continued use outweighed risks. Finally, this Notice concluded the Special Review of the non-wood preservative uses except for the deferred uses. After a hearing requested by several registrants, an Administrative Law Judge upheld the cancellations, and in July, 1989, that determination was upheld by the Administrator.

The Agency subsequently took regulatory actions on the deferred uses of the inorganic arsenicals as discussed below.

On October 19, 1990, EPA announced receipt of a request to voluntarily cancel a registration of lead arsenate used as a growth regulator on citrus (55 FR 42445). EPA stated the cancellation would become effective December 18, 1990 unless EPA received a request to withdraw the cancellation during the comment period. No such request was received. The cancellation became effective January 22, 1991. The Registrant could sell existing stocks until October 19, 1991. Existing stocks in the hands of dealers and users could be sold and used until exhausted. Tolerances were revoked April 3, 1991 (56 FR 13593). The revocation took effect before the end of the last sales date set in the cancellation order because the Agency believed that all but untreated commodities had cleared the channels-of-trade by the end of 1990.

In a letter dated March 15, 1989, EPA canceled a registration of calcium arsenate on turf at the registrant's request. The registrant was permitted to sell existing stocks until February 28, 1990. Existing stocks in the hands of dealers and end users could be sold and used until December 31, 1991.

On June 19, 1991, EPA announced that it had received a request for voluntary cancellation of the registration of sodium arsenite, a fungicide, on grapes (56 FR 28154). EPA also established a comment period to allow any interested party to have the registrations transferred. No requests for transfer were received. Thus, on January 13, 1992, EPA canceled the registrations (57 FR 1262). The registrant was allowed to sell and distribute existing stocks until January 13, 1993. All others were allowed to sell and use existing stock until supplies were exhausted. The tolerance was proposed for revocation in 1992 (57 FR 1244), and became final on July 22, 1993 (58 FR 39153). The effective date of the revocation is June 30, 1994.

Arsenic acid was also registered as a desiccant on okra grown for seed under the authority of section 24(c) of FIFRA. In 1989, the registrant requested voluntary cancellation from the state. The state allowed sale and use of existing stocks until November 1990.

In 1991, EPA announced its preliminary determination to cancel the registration of arsenic acid as a desiccant on cotton (56 FR 50576). The risk case was based on unacceptable cancer risks to workers exposed to arsenic, which is classified as a known human (Group A) carcinogen. The Agency concluded that these risks were not amenable to mitigation and were not balanced by the benefits to growers. In addition, while not a basis for initiating the Special Review, the Agency considered groundwater contamination a potential source of exposure. EPA further concluded that there were no practical protective measures to adequately mitigate exposure. Other matters addressed by EPA included:

(1) A proposal to prohibit the sale and use of existing stocks because the benefits associated with allowing time to sell and use existing stocks were judged to be limited and not justified when weighed against risks.

(2) A proposal to conclude the Special Review of all other non-wood preservative pesticide products containing inorganic arsenicals.

(3) A comment period which was later extended to June 5, 1992, at the request of several commenters (57 FR 3755, dated January 31, 1992).

EPA transmitted copies of the PD 2/3 to the Secretary of Agriculture and the Scientific Advisory Panel (SAP) for comment. The SAP met on June 25, 1992, to review the scientific issues in the PD 2/3. The SAP and the Department of Agriculture's comments are summarized in this Notice. In addition, they are printed in full in the Support Document for the Conclusion of the Special Review together with EPA's response. This Support Document may be found in the public docket as described in Unit VI of this notice.

After the comment period closed, the registrants Elf Atochem North American (Atochem) and Voluntary Purchasing Groups (VPG) initiated discussions with the Agency regarding voluntary cancellation conditioned upon provision for sale and use of existing stocks through the 1993 use season. On May 6, 1993, (58 FR 26975), EPA announced receipt of voluntary requests from these registrants of arsenic acid to cancel their registrations of arsenic acid use on cotton. The cancellations were made effective immediately. In the cancellation order, EPA permitted existing stocks to be sold until October 31, 1993. Growers are permitted to use existing stocks until December 31, 1993. Registrants will buy back stocks (in unopened containers) remaining after the 1993 use season. A discussion of the reasons for the change in the provision for sale and use of existing stocks may be found in Unit IV of this notice.

Subsequently, EPA found that Drexel Chemical Company also had a viable (although suspended) registration for arsenic acid cotton desiccant. After being contacted by EPA regarding this registration, Drexel requested voluntary cancellation, and notice of this action and the cancellation order was published in the **Federal Register** on July 22, 1993, (58 FR 39205).

The tolerance for arsenic acid on cottonseed was proposed for revocation on September 22, 1993 (58 FR 49267). With these actions, EPA completed review of the last inorganic arsenical in Special Review.

3. *Conclusion of Special Review (PD4).* In the PD 2/3 for arsenic acid on cotton (56 FR 50576), EPA set forth its risk/benefit determination for this use. After reviewing the comments received in response to the PD 2/3, EPA found no new information that would cause a change in the risk/benefit determination for arsenic acid on cotton. EPA's review of the comments, reconsideration of the risks and benefits of the registrants' proposal to permit the sale and use of existing stocks, and final determination regarding Special Review of arsenic acid on cotton are set forth in this document.

In addition, the PD 2/3 also proposed that the special review be concluded for lead arsenate on citrus, calcium arsenate on turf, sodium arsenite on grapes, and arsenic acid on okra grown for seed. The Agency's final determination regarding Special Review of these uses is set forth in this document.

II. Summary of Risk Determinations and Agency Evaluation of Comments and Additional Data

A. Hazard Characterization

In the PD 2/3 for arsenic acid (56 FR 50576), EPA discussed in detail the data on the carcinogenicity of arsenic. Arsenic is a known human (Group A) carcinogen, for which a dose-response relationship has been calculated for the inhalation and oral/dermal routes of exposure. The SAP reviewed and agreed with the risk characterization of the PD 2/3. Their comments are included in full in the Support Document. EPA received no other comments on the hazard characterization of arsenic. Thus, EPA has not revised the hazard characterization set forth in the PD2/3.

B. Exposure and Risk Assessment

In the PD 2/3, the Agency discussed the basis for its estimates of the levels of inhalation and dermal exposure for workers handling arsenic acid. The PD 2/3 displays in tabular form the Agency's conclusions regarding levels of exposure and risk for different occupations and different geographical regions where arsenic acid is applied. Estimates of excess upper bound risks ranged from 10^{-2} to 10^{-7}. In addition, the Agency calculated levels of potential exposure and risk for residents living in the vicinity of cotton gins. The estimated excess upper bound risk was estimated at 10^{-3}. EPA also found that there was a potential for arsenic to contaminate groundwater. The SAP reviewed and agreed with the risk characterization of the PD 2/3. The USDA comments did not specifically address the exposure and risk assessment of the PD 2/3. The Agency received several other public comments on its exposure case. These comments questioned exposure measurements for closed cabs, mixer/loader exposure, pilot exposure, ground-water concerns, the definition of a "normal" work year for harvesters, the use of the Pesticide Handlers Exposure Database (PHED), estimates of risk to area residents, and regulatory jurisdiction over cotton gin workers. Commenters submitted some new data relating to enclosed cab exposure, but noted that the limited data could not support a regulatory decision.

EPA carefully considered these comments. However, neither the comments nor the new data received could demonstrate that EPA's exposure estimates should be revised. Thus, EPA has not changed its exposure estimates or its risk case. A detailed discussion of the comments and the Agency response are available in the Support Document.

III. Summary of Benefits Assessment and Agency Evaluation of Comments and Additional Data Received

In the PD 2/3, EPA estimated that affected growers could lose in aggregate as much as $19 to $22 million per year as a result of the cancellation of arsenic acid. EPA received a number of comments on the benefits assessment. The most important general criticism was that EPA did not adequately assess the ripple effect on the local community if many growers left the cotton business. EPA carefully considered these comments. However, none of these comments contains data or specific information that would prove that EPA's estimate of benefits is greatly understated. Thus, EPA does not find it necessary to revise its benefits case. A detailed discussion of the comments on the benefits assessment of the PD 2/3 and EPA's response may be found in the Support Document.

In addition, the PD 2/3 was sent to the Secretary of Agriculture. The USDA/National Agricultural Pesticide Impact Assessment Program (NAPIAP) estimated losses ranging between $14 and $52 million, based on USDA and State assessments. They noted that EPA's estimate of $19 to $22 million was toward the lower end of their range. They noted the variability of arsenic acid use based on earliness of frost.

EPA carefully considered these comments. However, because the comments contained no data or details of how USDA made its estimates, EPA cannot evaluate their soundness. Thus, EPA does not feel its estimate is necessarily too low. EPA is well aware of the variability in frost dates from information contained in the Inorganic Arsenicals Assessment Team Report of 1980, and took this variability into account in developing its benefits assessment. These comments are considered in more detail in the Support Document.

IV. Summary of Existing Stocks Provisions and Agency Evaluation of Comments and Additional Data Received

In the PD 2/3, EPA proposed to prohibit the sale, distribution, and use of existing stocks of arsenic acid after the final date of cancellation because risks outweighed the localized benefits. EPA received several comments both supporting and opposing this position. Several commenters opposed a prohibition on sale and use of existing stocks because the severe local economic impact could be eased by a phaseout. Other commenters supported the prohibition on sale and use of existing stocks because waste treatment costs resulting from processing arsenic acid treated cotton were unreasonably high. EPA considered these comments, but did not find them persuasive.

However, with regard to the registrants Atochem and VPG, EPA has determined to allow the sale and use of existing stocks of arsenic acid products through the 1993 use season because this action achieves the most favorable risk/benefit determination. The comments, EPA response, and EPA's decision is discussed in detail in the May 6, 1993 Notice of Voluntary Cancellation (58 FR 26975) and in the Support Document.

V. Comments of the Scientific Advisory Panel and the Secretary of Agriculture

As required under Sections 6 and 25 of FIFRA, the Agency provided the PD 2/3 and technical support document to the Scientific Advisory Panel and the Secretary of Agriculture. Their comments and the EPA responses are summarized in Units II and III of this notice. In addition they are printed in full in the Support Document along with the EPA response.

VI. Risk/Benefit Assessment and Decision Regarding Special Review

Prior to 1991, the Agency had completed the review of the inorganic arsenicals, including wood preservatives, and most non-wood preservatives except for five uses of arsenic acid, sodium arsenite, lead arsenate, and calcium arsenate. In the PD 2/3 for arsenic acid, the Agency proposed to conclude the Special Review of four of these uses, including the use of arsenic acid as a desiccant on okra grown for seed, sodium arsenite as a fungicide on grapes, lead arsenate as a plant growth regulator on grapefruit, and calcium arsenate as a herbicide on turf, leaving only arsenic acid as a desiccant on cotton remaining in Special Review. In today's notice, the Agency has responded to the comments received on the PD 2/3 for arsenic acid as a cotton desiccant, and the Agency has determined that it will not modify the risk/benefit assessment of arsenic acid on cotton, which was set forth in the PD 2/3. Further, the registrants have requested voluntary cancellation of their registrations for arsenic acid on cotton, and EPA has canceled them. Sale and use of existing stocks of Atochem and VPG arsenic acid cotton desiccant products will end after the 1993 use season. Therefore, the Agency is concluding the Special Review for the remaining non-wood preservative uses of the inorganic arsenicals: lead arsenate growth regulator on citrus, calcium arsenate on turf, sodium arsenite fungicide on grapes, and arsenic acid on okra and cotton.

VII. Public Docket

Documents referred to in this Notice, including the Support Document, may be reviewed at the Public Docket (OPP-30000/29B), located at Room 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202. The Docket is open from 8:00 a.m. to 4:30 p.m., Monday-Friday.

List of Subjects

Environmental protection.

Dated: November 24, 1993.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 93-29716 Filed 12-7-93; 8:45 am]
BILLING CODE 6560-50-F

[OPP-030355; FRL-4742-6]

Receipt of an Application for Pesticide Registration for a Transgenic Plant Pesticide

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: EPA has received an application from the Monsanto Company for a transgenic plant pesticide registration containing the new active ingredient *Bacillus thuringiensis*subsp. *tenebrionis* delta endotoxin protein as produced by the CryIIIA gene and its controlling sequences. The EPA File Symbol for this application is 524-UTU, and the associated tolerance petition number is PP 3F4273. This is the first application for registration of a transgenic plant pesticide under section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, in which a plant has been genetically altered to produce a pesticide. Because of its uniqueness, the Agency has determined that this application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this application.

DATES: Written comments must be received on or before January 7, 1994.

ADDRESSES: By mail submit comments identified by the document control number [OPP-0930355] and the (File Symbol 524-UTU) to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part, or all of that information as "Confidential Business Information" (CBI). Information so marked, will not be disclosed except in accordancewith procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm.1128 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (7505C), Office of Pesticide programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703)-930-509-7690.

SUPPLEMENTARY INFORMATION: On September 3, 1993, an application to register a transgenic plant pesticide containing a new active ingredient was received from Monsanto Company, 700 Chesterfield Village Parkway, St. Louis, MO 63198. The application was assigned EPA File Symbol 524-UTU. Monsanto has formally applied for registration of their plant pesticide *Bacillus thuringiensis var. tenebrionis* (B.t.t.) Colorado potato beetle (CPB) control protein (CryIIIA). Monsanto has genetically modified potato plants to produce the pesticide control protein derived from the common soil bacterium *Bacillus thuringiensis* subsp. *tenebrionis* (B.t.t.). The protein produced by CPB resistant potatoes is

identical to that found in nature. Monsanto has genetically engineered Russett Burbank potatoes by using a plant expressed vector that transferred the CryIIIA and nptII genes into the genomic DNA of the potato plants. Monsanto has isolated the CryIIIA gene from *Bacillus thuringiensis* subsp. *tenebrionis* (B.t.t.) which encodes the Colorado potato beetle active protein. Monsanto has improved the gene for expression in plants and transferred it into potato plant to produce the natural identical B.t.t. protein pest control agent. This allows for the continuous pesticidal effect on the potato plant pesticide. In addition, the engineered potato plants express an enzyme, neomycin phosphotransferase II, which allows for selective growth of transformed plant cells on kanamycin during plant tissue culture. The purpose of Monsanto's application for pesticide registration, and exemption from the requirements of a tolerance, is to acquire a registration so that commercialization of their new and innovative product can be available for commercial use in control of the persistent pest, the Colorado potato beetle.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will beconsidered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice will be available in the Public Response and Program Resources Branch, Field Operations Division (FOD) office at the address provided above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. For persons interested in reviewing the application file, It is suggested to telephone the FOD office(703–305–5805) to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: November 22, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–29717 Filed 12–7–93; 8:45 am]

BILLING CODE 6560–50–F

[PF–587; FRL–4746–4]

Monsanto Co. et al.; Notice of an Initial Filing and an Amendment of Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces an initial filing of a pesticide petition, PP 3F4273 by Monsanto Co., and an amendment to a previously filed pesticide petition, PP 9F3787 by Merck & Co., Inc.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC. In person, contact the PM named in each petition at the following office location/ telephone number:

Product Manager	Office location/ telephone number	Address
George LaRocca (PM-13).	Rm. 202, CM #2, 703-305-6100.	1921 Jefferson Davis Hwy., Arlington, VA.
Phil Hutton (PM-18).	Rm. 213, CM #2, 703-305-7690.	Do.

SUPPLEMENTARY INFORMATION: EPA has received an initial filing of a pesticide petition and an amendment to a previously submitted pesticide petition as follows:

Initial Filing

1. *FAP 3F4273.* Monsanto Co., 700 Chesterfield Parkway North, St. Louis, MO 63193, has submitted the pesticide petition proposing to amend 40 CFR part 180 to establish a tolerance exemption for residues of the plant pesticide active ingredient *Bacillus thuringiensis* subsp. *tenebrionis* (*B.t.t.*) Colorado Potato Bettle (CPB) Control Protein as expressed in plant cells. The active ingredient is *Bacillus thuringiensis* subsp. *tenebrionis* delta endotoxin protein as produced by the CryIIIA gene and its controlling sequences (100%). (PM 18)

Amended Filing

2. *PP 9F3787.* In the **Federal Register** of November 1, 1989 (54 FR 46119), EPA issued notice of the petition submitted by Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., Hillsborough Rd., Three Bridges, NJ 08887, proposing to amend 40 CFR 180.449 by establishing a regulation to permit residues of avermectin B1 and its 8,9-isomer in or on pears at 0.035 part per million (ppm). Merck has submitted new pear residue data to support a reduction of the pending tolerance to 0.02 ppm and has submitted a revised Section F to the petition for the new tolerance. The proposed analytical method for determining residues is high-pressure liquid chromatography (HPLC). (PM 13)

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Authority: 7 U.S.C. 136a.

Dated: November 30, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93-29828 Filed 12-7-93; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4810-8]

Notice of Proposed Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9622, notice is hereby given that a proposed purchaser agreement associated with the Croydon "TCE" Superfund Site in Croydon PA, was executed by the Agency on September 30, 1993 and is subject to final approval by the United States Department of Justice. The Purchaser Agreement would resolve certain potential EPA claims under Section 107 of CERCLA, 42 U.S.C. 9607, against Norman D. Leibowitz, Rochelle H. Leibowitz and Norshell Industries ("The purchasers"). The settlement would require the purchasers to pay a principal payment of $6,000 over a one year period with interest, to the Hazardous Substances Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

DATES: Comments must be submitted on or before January 7, 1994.

ADDRESSES: *Availability:* The proposed agreement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. A copy of the proposed agreement may be obtained from Suzanne Canning, U.S. Environmental Protection Agency, Regional Docket Clerk (3RC00), 841 Chestnut Building, Philadelphia, PA 19107. Comments should reference the "Croydon "TCE" Superfund Site" and "EPA Docket No. III-93-51-DC" and should be forwarded to Suzanne Canning at the above address.

FOR FURTHER INFORMATION CONTACT: Rodney Travis Carter (3RC21), Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597-3176.

Dated: October 5, 1993.

Stanley L. Laskowski,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 93-29897 Filed 12-7-93; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4811-1]

Proposed List of Water Quality Limited Waterbodies Needing Total Maximum Daily Loads in the State of Minnesota

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of a proposed Clean Water Act section 303(d) list for the State of Minnesota.

SUMMARY: The purpose of this notice is to announce the availability for public review and comment of a proposed list of water quality-limited segments in Minnesota requiring the development of total maximum daily loads (TMDLs). This list, required for each State by section 303(d) of the Clean Water Act, identifies 447 lakes and stream segments for which existing pollution controls are inadequate to provide for attainment of water quality standards.

The list is partially based on a September 16, 1993, letter from the State of Minnesota which included a list of waterbodies that the State believed constituted an acceptable section 303(d) list. USEPA expanded the September 16 list to add waterbodies on which fish consumption advisories have been issued. These waterbodies were excluded from the State's September 16 list.

Both the proposed list and the support documentation used to develop the proposed list are available to the public for review and comment. Specific issues on which comments are requested are: whether there are any waterbodies currently not on the proposed list which should be listed pursuant to section 303(d); whether there are waterbodies on the proposed list which should not be listed; the order in which the waterbodies identified on the list have been prioritized for development of TMDLs; and, use of data in preparing the proposed list that is more than 5 years old and of uncertain validity.

For comments on a particular waterbody, USEPA requests that the waterbody be referenced by its name, county or counties, 11 digit hydrologic unit code, or State lake identification code (if available).

DATES: Comments on the proposed section 303(d) list for the State of Minnesota must be postmarked on or before January 7, 1994.

ADDRESSES: Persons wishing to review the proposed section 303(d) list may obtain a copy by contacting Mr. Robert F. Pepin, U.S. Environmental Protection Agency, Region 5, Water Division, 77 West Jackson Boulevard, Chicago, Illinois 60604; Telephone (312) 886-1505. Written comments and materials regarding the proposed list should be addressed to the Water Division Director at the above address. Comments and materials received will be available on request for public inspection, by appointment, during the hours of 9 a.m. through 4 p.m., at the above address.

FOR FURTHER INFORMATION CONTACT: Robert F. Pepin, Regional TMDL Coordinator; telephone (312) 886-1505, or at the above address.

SUPPLEMENTARY INFORMATION:

Background

I. Section 303(d) of the Clean Water Act

The Clean Water Act (Act) requires each State to develop water quality standards, which describe the uses that exist or are to be made of each of the State's waterbodies, and which establish criteria to measure the attainment of those designated uses. In addition, the Act imposes specific technology-based requirements on point source discharges of pollutants to the Nation's waterbodies. Section 303(d) of the Act requires each State to identify and prioritized waterbodies for which the required Federal, State, or local controls are inadequate to attain water quality standards. For listed waterbodies, TMDLs are to be developed that determine the total allowable pollutant loading to the waterbody that will assure attainment with the water quality standards. The allowable loads for specific pollutants are then allocated among the various sources, and controls are then imposed to reduce the pollutant loadings to the designated allocation for each source.

Revisions to USEPA regulations, published on July 22, 1992, (57 FR 33040), require each State to develop a Section 303(d) list on or before October

22, 1992, with subsequent lists due every 2 years thereafter, beginning April 1, 1994. Waterbodies may be removed from the list if an adequate demonstration is made by the State that those waterbodies either are in attainment of water quality standards, or that enforceable control programs will be implemented that will assure attainment of water quality standards, within a specified time period. Additional requirements for an approvable Section 303(d) list may be found at 40 CFR 130.7(b)(6).

USEPA is required to review, and approve or disapprove, each State list. If USEPA disapproves a State list, USEPA must prepare a section 303(d) list, and seek public review and comment on such list. USEPA must then consider comments received from the public, and finalize the list. The resulting list then serves as a basis for negotiating with the State specific annual program commitments for the development of TMDLs, in accordance with the priorities provided on the list. The list is also transmitted to the State for incorporation into the State's Water Quality Management Plan and for implementing development of TMDLs in accordance with the established priorities.

II. State of Minnesota

On April 1, 1992, Minnesota submitted a Section 303(d) list to USEPA, identifying eight waterbodies for development of TMDLs according to a specified schedule. The list was revised three times in the subsequent months. On June 24, 1992, Minnesota revised the list by incorporating by reference all waterbodies listed as impaired in Appendix III–1 of the State's FY 1992 Section 305(b) Report to Congress (Minnesota Water Quality: Water Years 1990–1991). The June 24 list included the eight waterbodies identified in the April 1, 1992, submission, targeting them as high priority for development of TMDLs. The remaining waterbodies identified in the Minnesota section 305(b) report were identified in the June 24 list as low priority for development of TMDLs. Minnesota later notified USEPA of plans to again revise the list.

On February 23, 1993, Minnesota prepared a draft section 303(d) list identifying 47 waterbodies as high priority for development of TMDLs and identifying the remaining waterbodies, characterized as impaired in the Minnesota section 305(b) report, as low priority. On March 24, 1993, the Minnesota Pollution Control Board reviewed the draft list in preparation for solicitation of public comment. On April 1, 1993, USEPA received notice from the Minnesota Pollution Control Agency that the State had reconsidered its draft list and had shortened the draft section 303(d) list to two waterbodies: the Minnesota River and the Redwood River. This shortened list was publicly noticed on April 14, 1993. A final list containing the two waterbodies was submitted to USEPA for approval on July 6, 1993.

III. USEPA Disapproval of the Minnesota Section 303(d) List

On August 9, 1993, USEPA partially disapproved the July 6, 1993, Minnesota section 303(d) list because it failed to include all water quality limited waterbodies meeting the section 303(d) listing requirements, as evidenced by the impaired waterbodies documented in the Minnesota section 305(b) report. In addition, the submission failed to include the supporting information required by 40 CFR 130.7(b)(6).

USEPA did approve, however, Minnesota's inclusion of the Minnesota and Redwood Rivers on its section 303(d) list and the targeting of those waterbodies for development of TMDLs as high priority, in accord with the schedules provided in the July 6, 1993, submission.

IV. USEPA Development of a Section 303(d) List

After partially disapproving Minnesota's July 6, 1993, list, USEPA immediately began developing its own list for Minnesota. Pursuant to 40 CFR 130.7(b)(5), all existing and readily available information must be considered by USEPA in developing a section 303(d) list, including: the State's section 305(b) Report, any discharge dilution calculations or water quality modeling information, available information from Federal, State, local, public, or academic organizations, and the State's Section 319 Nonpoint Assessment Report.

While USEPA was in the process of developing a proposed section 303(d) list for Minnesota, the State, on September 16, 1993, provided USEPA with a list of 73 waterbodies which purported to include all waterbodies required to be listed pursuant to section 303(d). After reviewing Minnesota's September 16, 1993, list, together with documentation submitted by Minnesota in support of this list, USEPA determined that these 73 waterbodies should be included on the Minnesota section 303(d) list.

In addition to these waterbodies, USEPA proposes the inclusion of waters which are characterized in the Minnesota section 305(b) Report as partially supporting or not supporting uses due to elevated fish tissue concentrations of polychlorinated biphenyls or mercury. Minnesota excluded these waters from its September 16, 1993, list because it believed that no statutory or regulatory program exist at the State or Federal level to address the causes of the impairments.

Waterbodies which have been specifically excluded from this proposed section 303(d) list consist of those listed as impaired in Minnesota's section 305(b) Report, based solely on best professional judgment or on ambient water quality data older than 5 years. These waterbodies were excluded due to unreliability of the data. USEPA will consider, however, public comments received on the use of such information for listing waterbodies pursuant to section 303(d).

Dated: November 23, 1993.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 93–29898 Filed 12–7–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

December 2, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0194.

Title: Section 74.21, Broadcasting Emergency Information.

Action: Reinstatement of a previously approved collection for which approval has expired.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 1 response; .5 hours average burden per response; 1 hour total annual burden.

Needs and Uses: Section 74.21 requires that a licensee of an auxiliary broadcast station notify the FCC in Washington, DC, as soon as practicable, in the event of an emergency where the station is operated in a manner other than that for which is authorized. This notification shall specify the nature of the emergency and the use to which the station is being put. The licensee shall also notify the FCC when the emergency operation has been terminated. These notifications are used by the FCC staff to evaluate the need and nature of the emergency broadcast to confirm that an actual emergency existed.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–29900 Filed 12–7–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Intent To Prepare an Environmental Impact Statement

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency gives notice of its intent to prepare an Environmental Impact Statement (EIS) for the construction of a new Oakland City Administration Building(s). This EIS also will serve as an Environmental Impact Report (EIR) under the California Environmental Quality Act.

DATES: We invite your comments, which we must receive on or before January 7, 1994.

ADDRESSES: Please submit written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (fax) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Sandro Amaglio, Federal Emergency Management Agency, Region IX, Building 105, Presidio of San Francisco, San Francisco, California 94129, (415) 923–7284, (fax) (415) 923–7270.

SUPPLEMENTARY INFORMATION: The City of Oakland proposes to construct a new City Administrative Building in downtown Oakland, California, and to prepare an urban design master plan for the area immediately surrounding the City Administration Building and Plaza. The proposed project will replace offices damaged during the Loma Prieta earthquake in October 1989. The City will use public funding assistance administered by the FEMA under section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*, as amended, to construct the replacement facility.

The City also proposes to integrate the development of this project with other private sector or joint public/private sector development activities to redevelop the downtown area near City Hall. The City will prepare an urban design master plan for each alternative City Administration Building project. This plan will develop the new Administration Building within a broader urban renewal context and one that will contribute significantly to the revitalization of the downtown Oakland area.

Sensitivity to the landmark status of City Hall and the historical context of the area and buildings immediately surrounding the City Hall will be important in preparing the urban design master plan and in the design of the new Administration Building.

Alternative Projects

Five alternative projects, including the no-action alternative, will be evaluated in the EIS. Each alternative, including the no-action alternative, will assume that the City Manager, City Council, Mayor, City Clerk, Auditor and City Attorney offices will return to the renovated City Hall building. Additionally, the demolition of City Hall West and the Miller Federal Building is included as part of each alternative project. There will be a parking requirement for 350 vehicles.

Alternative 1: Dalziel and Taldan Blocks. Under this alternative, the City would develop new administration buildings on both the Dalziel (from 15th to 16th Streets, between San Pablo Avenue and Clay Street) and the Taldan (between Broadway and San Pablo Avenue, from Kahn's Alley to 14th Street) blocks. The proposed building on the Dalziel block would have five stories above ground and one story below, while the structure on the Taldan block would rise eight stories. The combined floor area of the two buildings would total approximately 355,000 square feet. The façade of the Broadway Building would be retained, with floor plates from the new building extended into the existing Broadway Building. The historic Plaza Building would be retained (as a separate building) and renovated, but this project will not include renovation. Parking for this alternative would be in two underground levels, and would have room for approximately 350 vehicles. City Hall Plaza also would be renovated under this alternative. The two sites are currently zoned C–55 (Central Core Commercial Zone).

Alternative 2: Dalziel only. Under Alternative 2, the City would build an Administration Building ten stories above grade (plus one story below grade) on the Dalziel block. It would retain the Plaza Building as a separate structure. All City offices not housed in the rehabilitated City Hall would be located in this building. This alternative would have 350 spaces in a two level underground parking lot. As with each other alternative, City Hall Plaza would be renovated. This building would contain approximately 355,000 square feet of floor space. Current zoning for this alternative site is C–55 (Central Core Commercial Zone).

Alternative 3: City Hall West and Miller Federal Building Sites. Under this alternative, an eight story building would be constructed above grade, with an additional office level underground. The City would vacate 15th Street between Clay and Jefferson (between the two sites) and would connect the sites with a rotunda-like element in the middle. This structure would contain approximately 355,000 square feet of administrative space. An approximately 350-space parking garage would be built in a two level (above grade) garage on the Miller block, facing Jefferson Street. The project would involve only the City Hall West site on that block, and all of the Miller block except the Touraine Hotel. City Hall Plaza would be renovated under this alternative. The existing zoning at this site is C–55 (Central Core Commercial Zone) except the Jefferson Street half of the Miller building site, which is C–51 (Central Business Service Commercial Zone).

Alternative 4: Taldan and Rotunda Building. Alternative 4 would involve an eight story building on the Taldan block. It would extend the floor plates of the new building into the façade of the existing Broadway Building. The City-owned Rotunda Building would be renovated, and a skywalk would connect the second and third floors of the new building to the Rotunda Building over Kahn's Alley. This complex would contain approximately 355,000 square feet of floor space. The program requirement of 350 parking spaces would need to be off-site, most likely in nearby surface lots and public park is currently zoned C–55 (Central Core Commercial Zone).

Alternative 5: No Action Alternative. The No-Action Alternative assumes that no new building development would

take place, and that the City would continue to lease office space as it does now. The City now leases office space primarily at the Wells Fargo building (1333 Broadway), the Smith building (1330 Broadway), 475 14th Street, 505 14th Street, 300 Lakeside, as well as several other sites. This alternative assumes that City Hall will be reoccupied (end of 1994) by the City Manager, City Council, Mayor, City Attorney, City Clerk and City Auditor. Parking would be similar to the current situation, which includes City Center, Convention Center, surface lots, Clay Street garage, and Merchant's garage.

Possible Environmental Effects. Each alternative project is within the Downtown Oakland Historic District, an historic district that the U.S. Department of the Interior has officially determined to be eligible for listing on the National Register of Historic Places. In addition, each alternative project contains or is immediately next to buildings of historical or architectural significance. Since the Administration Building project involves federal funding, FEMA, in coordination with the City, will carry out a historic preservation consultation process with the State Historic Preservation Officer (SHPO) under Section 106 of the National Historic Preservation Act of 1966.

Additional environmental effects may include land use impacts; public policy conformity; traffic, circulation and parking effects; historic, architectural, and cultural resources impacts; urban design and visual quality effects; geologic, seismology and soils impacts; effects of wind, shadows and glare; hazardous materials; air quality impacts; interior environment (air quality, lighting); noise effects; surface water hydrology and water quality impacts; public services and utilities (police, fire, emergency medical response, water, sanitary sewers, solid waste, natural gas and electricity); energy impacts; and cumulative effects.

FEMA has determined that the project may be an action significantly affecting the quality of the human environment and an Environmental Impact Statement will be prepared by the Federal Emergency Management Agency, coordinating with the City of Oakland, under the California Environmental Quality Act and the National Environmental Policy Act of 1969.

Availability of Draft EIS

The Draft EIS is scheduled to be available in March 1994. A copy of the Draft EIS will be on file at 1330 Broadway, Third Floor, Oakland, California 94612, and available for public inspection. Copies may be obtained at the same address, or from the Federal Emergency Management Agency, Region IX, Building 105, Presidio of San Francisco, San Francisco, California 94129, upon request.

We invite all interested agencies, groups and persons to submit written comments on the Oakland City Administration Building(s) project and on the draft EIS. Written comments received within 30 days of the publication of this notice in the Federal Register will be considered before the preparation and distribution of the draft EIS. In addition, one or more public scoping meetings will be conducted. Notice of any public meetings will include publication in newspapers of general circulation as well as other means.

Dated: December 1, 1993.

James L. Witt,

Director.

[FR Doc. 93–29944 Filed 12–7–93; 8:45 am]

BILLING CODE 6718–01–P

GENERAL ACCOUNTING OFFICE

Title 2, "Accounting," Policy and Procedures Manual for the Guidance of Federal Agencies

AGENCY: General Accounting Office.

ACTION: Notice of document availability.

SUMMARY: This Notice indicates the availability of a letter from the Comptroller General to the Heads of Departments and Agencies on the Status of Title 2, "Accounting," of GAO's Policy and Procedures Manual for the Guidance of Federal Agencies.

ADDRESSES: Document Distribution, General Accounting Office, room 1000, 700 4th Street NW., Washington, DC Order by mail: General Accounting Office, P.O. Box 6015, Gaithersburg, MD 20884–6015.

FOR FURTHER INFORMATION CONTACT: Bruce Michelson (telephone 202–512–9366), Accounting and Information Management Division, General Accounting Office.

SUPPLEMENTARY INFORMATION: This Notice indicates the availability of a letter dated December 1, 1993, from the Comptroller General to the Heads of Departments and Agencies on the Status of Title 2, "Accounting," of GAO's Policy and Procedures Manual for the Guidance of Federal Agencies. The primary purpose of the letter is to alert agencies of GAO's intention to revise Title 2 after a sufficient number of new standards, recommended by the Federal Accounting Standards Advisory Board (FASAB), are approved by the Comptroller General, the Director of the Office of Management and Budget (OMB), and the Secretary of the Treasury. Under a Memorandum of Understanding among GAO, OMB, and the Treasury of Federal Government Accounting Standards, the Comptroller General, The Director of OMB and the Secretary of the Treasury decide on principles and standards after considering the recommendations of FASAB. GAO will publish all approved accounting standards as revisions to Title 2.

Dated: December 1, 1993.

Bruce K. Michelson,

Senior Assistant Director for Accounting Policy.

[FR Doc. 93–29883 Filed 12–7–93; 8:45 am]

BILLING CODE 1610–01–M

GENERAL SERVICES ADMINISTRATION

Report on Revised System of Records Under the Privacy Act of 1974

AGENCY: General Services Administration.

ACTION: Notification of revised system of records.

SUMMARY: The purpose of this document is to give notice, under the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, of intent by the General Services Administration (GSA) to revise a system of records maintained by GSA.

The system of records, Credit Data on Individual Debtors, PPFM–7, is changed to add to the list of routine uses the fact that records may be disclosed to the Internal Revenue Service for the purpose of offsetting a Federal claim against a debtor's income tax refund, and to the Defense Manpower Data Center (DMDC) and the U.S. Postal Service to conduct computer matching programs, for the purpose of identifying and locating individuals who are receiving Federal salaries or benefit payments and are delinquent in their payment of debts to the Government.

DATES: Any interested party may submit written comments about this revision. Comments must be received on or before the 30th day following publication of this notice (January 7, 1994). The system will become effective without further notice on the 30th day following publication of this notice unless comments are received that would result in a contrary decision.

ADDRESSES: Address comments to the General Services Administration (CAIR) Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Cunningham, GSA Privacy Act Officer, telephone (202) 501–2691.

Background

The system of records, Credit Data on Individual Debtors, PPFM–7, is changed to implement the Cash Management Improvement Act Amendments of 1992, Pub. L. 102–589 and Title 26 Code of Federal Regulations, § 301.6402–6 *et seq.* The revision will enable the agency to assemble in one system information on individuals who are indebted to the General Services Administration for the purpose of determining if there is a reasonable prospect of effecting enforced collections from the debtors.

GSA/PPFM–7

SYSTEM NAME:

Credit Data on Individual Debtors.

SYSTEM LOCATION:

Records are located at the following General Services Administration, Office of Finance, Central Office and regional office addresses:

GS Building, 18th and F Streets, NW., Washington, DC 20405.

John W. McCormack Post Office and Courthouse, Boston, MA 02109.

Jacob K. Javits Federal Building, 26 Federal Plaza, New York, NY 10007.

Wannamaker Building, 100 Market Square East, Philadelphia, PA 19107.

401 West Peachtree Street, Atlanta, GA 30365–2550

John C. Kluczynski Federal Building, 230 South Dearborn Street, Chicago, IL 60604.

General Services Administration, 1500 East Bannister Road, Kansas City, MO 64131.

Fritz G. Lanham Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

Denver Federal Center Complex, Building 41, Denver, CO 80225.

General Services Administration, 525 Market Street, San Francisco, CA 94105.

GSA Center, Auburn, WA 98002

GSA Regional Office Building, Seventh and D Streets, SW., Washington, DC 20407.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals include employees and former employees and other individuals who are indebted to the General Services Administration.

CATEGORIES OF RECORDS IN THE SYSTEM:

Types of personal data in the system may take the form of commercial reports, agency investigative reports showing the debtor's assets and liabilities and his or her income and expenses, the individual debtor's assets and liabilities and income and expenses, and other information such as social security number and home address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Claims Collection Act of 1966, 80 Stat. 309, 31 U.S.C. 952; Debt Collection Act of 1982, Pub. L. 97–365; and Title 4 Code of Federal Regulations, chapter II, part 105; Cash Management Improvement Act Amendments of 1992, Pub. L. 102–589 and Title 26 Code of Federal Regulations, § 301.6402–6 *et. seq.*

PURPOSE(S):

To assemble in one system information on individuals who are indebted to the General Services Administration for the purpose of determining if there is a reasonable prospect of effecting enforced collections from the debtors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. Records may be disclosed to the Department of Justice for litigation when debtors fail to make payment through normal collection routines. Credit data becomes an integral part of claim files forwarded to the General Accounting Office and/or the Department of Justice as prescribed in the Joint Federal Claims Collections Standard (4 CFR ch II).

b. Records may be disclosed to a congressional office in response to an inquiry from the congressional office made at the request of the individual to whom the records pertain.

c. Records may be disclosed to other Federal agencies where an applicant for employment or a current employee of the agency is delinquent in repaying his/her Federal financial obligation, for the purpose of enlisting the agency's cooperation in facilitating repayment.

d. In the event that a record(s) maintained indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant record(s) may be referred to the appropriate agency, such as the General Accounting Office, the Office of Management and Budget, the Department of Justice, or state agencies charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

e. A record from this system of records may be disclosed to a Federal agency in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

f. Records may be disclosed to a debt collection agency with which GSA has contracted for collection services, to recover indebtedness owed to the United States.

g. Information contained in the system of records may be disclosed to the Internal Revenue Service to obtain mailing addresses for the purpose of locating the debtor to collect or compromise a Federal claim against the taxpayer.

h. Information contained in the system of records may also be disclosed to the Internal Revenue Service for the purpose of offsetting a Federal claim against a debtor's income tax refund.

i. Pursuant to applicable matching agreements, records may be disclosed to the Defense Manpower Data Center (DMDC) and the U.S. Postal Service to conduct computer matching programs, for the purpose of identifying and locating individuals who are receiving Federal salaries or benefit payments and are delinquent in their repayment of debts owed to the U.S. Government under certain programs administered by the General Services Administration, in order to collect the debts under the provisions of the Debt Collection Act of 1982 (P.L. 92–365) by voluntary payment or by administrative or salary offset procedures.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "Consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper form in file folders stored in metal filing cabinets and in electronic form in computers.

RETRIEVABILITY:

Credit data is maintained by debtor name and claim number, cross

referenced to social security number (when available) to verify name and address.

SAFEGUARDS:

When not in use by personnel responsible for the collection of claims, records are stored in lockable filing cabinets. Personal computer files are protected by the use of passwords.

RETENTION AND DISPOSAL:

The records are a part of the GAO site auditing collection files and are cut off at the end of the fiscal year, held 1 year, and then retired under Record Group 217 (GAO). Records created prior to July 2, 1975, will be retained by GAO for 10 years and 3 months after the period of the account. Records created on or after July 2, 1975, will be retained by GAO for 6 years and 3 months after the period of the account.

SYSTEM MANAGER AND ADDRESS:

Chief, Receivables and Collection Management Branch, Financial Control Division, Office of Chief Financial Officer, 18th and F Streets, NW., Washington, DC 20405.

NOTIFICATION PROCEDURE:

Inquiries by individuals regarding claims pertaining to themselves should be addressed to the system management.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to records should be addressed to the system manager and should include name and address.

CONTESTING RECORDS PROCEDURES:

GSA rules for contesting the contents of the records and for appealing initial determinations are promulgated in 41 CFR 105.64.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from commercial credit reports, agency investigative reports, individual debtors' own financial statements, and from other GSA systems of records.

Dated: November 24, 1993.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 93-29902 Filed 12-7-93; 8:45 am]

BILLING CODE 6820-34-M

Federal Property Resources Service; Fort Peck Lake Project, Montana; Transfer of Property

[Wildlife Order 183; 7-D-MT-413-GG]

Pursuant to section 2 of Public Law 537, 80th Congress, approved May 19, 1948 (16 U.S.C. 667c), notice is hereby given that:

1. By Letter from the General Services Administration, dated September 10, 1993, the property, consisting of 6,020.35 acres of unimproved land, known as Fort Peck Lake, Montana, has been transferred to the Fish and Wildlife Service, U.S. Department of the Interior,

2. The above described property was conveyed for wildlife conservation in accordance with the provisions of section 1 of said Public Law 80-537 (16 U.S.C. 667b), as amended by Public Law 92-432.

Dated: November 18, 1993.

Earl E. Jones,

Commissioner, Federal Property Resources Service.

[FR Doc. 93-29869 Filed 12-7-93; 8:45 am]

BILLING CODE 6820-96-M

Performance Review Board; Membership; Senior Executive Service

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Donald P. Heffernan, Director of Personnel, General Services Administration, 18th & F Streets, NW., Washington, DC 20405, (202) 501-0398.

SUPPLEMENTARY INFORMATION: Section 4313(c) (1) through (5) of Title 5 U.S.C. requires each agency to establish in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Board(s). The Board(s) shall review the performance rating of each senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Members of the Review Board are:

1. Cynthia A. Metzler, (Chairperson) Associate Administrator for Administration
2. Roger D. Daniero, Commissioner, Federal Supply Service
3. Carole A. Dortch, Regional Administrator, Region 4 (Atlanta)
4. Dennis J. Fischer, Chief Financial Officer
5. Kenneth R. Kimbrough, Commissioner, Public Buildings Service
6. Woody L. Landers, Assistant Regional Administrator, Federal Supply Service, Region 7 (Fort Worth)
7. John T. Myers, Acting Regional Administrator, Region 10 (Auburn)
8. Joe M. Thompson, Commissioner, Information Resources Management Service

Dated: December 2, 1993.

Donald P. Heffernan,

Director of Personnel.

[FR Doc. 93-29885 Filed 12-7-93; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Meeting of the Genome Research Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Genome Research Review Committee, National Center for Human Genome Research, December 6, 1993, 1:30-5, at the O'Hare Hilton, Conference Room 2004, O'Hare Airport, Chicago, Illinois.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public for the review, discussion and evaluation of individual grant applications. The applicants and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Linda Engel, Chief, Office of Scientific Review, National Center for Human Genome Research, National Institutes of Health, Building 38A, room 604, Bethesda, Maryland 20892, (301) 402-0838, will furnish the meeting agenda, roster of committee members and consultants, and substantive program information upon request.

This notice is being published later than the 15 days prior to the meeting due to the difficulty of coordinating schedules.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research.)

Dated: November 23, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93-29926 Filed 12-7-93; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Vaccine Advisory Committee; Public Meeting

AGENCY: Office of the Assistant Secretary for Health.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health are announcing the forthcoming meeting of the National Vaccine Advisory Committee.

DATE: Date, Time and Place: January 6, 1994 at 9 a.m.; and January 7, at 8:30 a.m.; Hubert H. Humphrey Building, room 703A, 200 Independence Avenue, SW., Washington, DC 20201. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should be sent to Chester A. Robinson, D.P.A., Acting Executive Secretary, National Vaccine Advisory Committee, National Vaccine Program, HHH Building, room 730E, 200 Independence Avenue, SW., Washington, DC, (202) 401–8141.

Agenda: Open Public Hearing

Interested persons may formally present data, information, or views orally or in writing on issues pending before the Advisory Committee or on any of the duties and responsibilities of the Advisory Committee as described below. Those wishing to make presentations should notify the contact person before December 29, 1993, and submit a brief statement of the information they wish to present to the Advisory Committee. Requests should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. A maximum of 10 minutes will be allowed for a given presentation. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make an oral presentation at the conclusion of the meeting, if time permits, at the chairperson's discretion.

Open Advisory Committee Discussion

There will be updates on the National Vaccine Program, and the National Vaccine Compensation Program. There will be reports and discussions on the four working subcommittees: Adult Immunization; National Vaccine Plan; State and Local Impediments to Immunization Services; and Vaccination Registry. Meetings of the Advisory Committee shall be conducted, insofar as is practical, in accordance with the agenda published in the **Federal Register** notices. Changes in the agenda will be announced at the beginning of the meeting. Persons interested in specific agenda items may ascertain from the contact person the approximate time of discussion. A list of Advisory Committee members and the charter of the Advisory Committee will be available at the meeting. Those unable to attend the meeting may request this information from the contact person. Summary minutes of the meeting will be made available upon request from the contact person.

Dated: December 1, 1993.

Chester A. Robinson,

Acting Executive Secretary, NVAC.

[FR Doc. 93–29908 Filed 12–7–93; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–93–3684]

Notices of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Joe Lackey, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 29, 1993.

John T. Murphy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Transmittal of Payment of One-Time Mortgage Insurance Premiums.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The form (HUD–27001) is prepared by HUD-approved mortgagees to provide remitter and mortgage data to HUD with payments of one-time mortgage insurance premiums. The data is used to record the collection, acknowledge receipt, and confirm sufficiency and/or accuracy of the funds and data received.

Form Number: HUD–27001.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–27001	7,285		80.5		.05		29,337

Total Estimated Burden Hours: 29,337.

Status: Extension.

Contact: Juanita C. Ginyard, (202) 708–2438; Angela Antonelli, OMB, (202) 395–6880.

Dated: November 29, 1993.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Affirmative Fair Housing Marketing Plan.

Office: Fair Housing and Equal Opportunity.

Description of the Need for the Information and Its Proposed Use: This form is required by all applicants desiring to participate in HUD's insured housing programs, both single family and multifamily. HUD uses this information to assess the adequacy of the applicant's proposed actions to carry out the Affirmative Fair Housing Marketing requirements of 24 CFR 200.600 and review compliance with these requirements under 24 CFR part 108, the AFHM Compliance Regulations.

Form Number: HUD–935.2.

Respondents: Businesses or Other For-Profit and Federal Agencies or Employees.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–935.2	2,532		1		.75		1,899

Total Estimated Burden Hours: 1,899.

Status: Extension.

Contact: Steve K. Tursky, HUD, (202) 708–2297; Joseph F. Lackey, Jr., OMB, (202) 395–6880.

Dated: November 29, 1993.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Annual Progress Report (APR) for Competitive Homeless Assistance Programs.

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: Annual Progress Reports for HUD's competitive homeless assistance programs will be completed each year by State and local governments, public housing authorities, and non-profit organizations. These reports will provide HUD with information necessary for program monitoring and evaluation.

Form Number: HUD–40118.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: Recordkeeping and annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual Report	441		1		20		8,820
Recordkeeping	441		1		45		19,845

Total Estimated Burden Hours: 28,665.

Status: New.

Contact: Helen Guzzo, HUD (202) 708–1234; Joseph F. Lackey, Jr., OMB, (202) 395–6880.

Dated: November 29, 1993.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Housing Opportunities for Persons with AIDS (HOPWA) Program (FR–3178).

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: The HOPWA program provides entitlement and competitive grants to States and units of local government for housing assistance and supportive services for persons with AIDS for which applications, certifications, waivers, and annual reports will be filed.

Form Number: SF–424 and Certifications, HUD–40110, 40110–B, and 40110–C.

Respondents: State or Local Governments.

Frequency of Submission: Recordkeeping and annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Applications	117		3		23.43		8,226
Recordkeeping	117		1		45.00		5,265

Total Estimated Burden Hours: 13,491.

Status: Reinstatement.

Contact: Mark Johnston, HUD, (202) 708–1234; Angela Antonelli, OMB, (202) 395–6880.

Dated: November 29, 1993.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Issuer Eligibility and Integrity Reforms (FR–2908).

Office: Government National Mortgage Association (GNMA).

Description of the Need for the Information and Its Proposed Use: The information collection is needed to enable GNMA to properly screen new applicants, approve commitment requests, and determine continuing issuer eligibility. The affected parties are the 750 GNMA-approved issuers in the Mortgage-Backed Securities program and new issuer applicants.

Form Number: None.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	750		1.25		6.59		6,190

Total Estimated Burden Hours: 6,190.
Status: New.
Contact: Ronald P. Sugarman, HUD, (202) 708–2884; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: November 22, 1993.

[FR Doc. 93–29863 Filed 12–7–93; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–93–3685]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 1, 1993.

Kay Weaver,
Acting Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Joint Community Development Program (FR–3415).
Office: Community Planning and Development.
Description of the Need for the Information and Its Proposed Use: This information collection provides applications for the Discretionary Grant program.
Form Number: SF–424, 424A, 424B, and 269A.
Respondents: State or Local Governments and Non-Profit Institutions.
Frequency of Submission: Recordkeeping and Quarterly.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Applications	200		1		40.0		8,000
Reports	20		5		6.4		640
Recordkeeping	20		1		32.0		640

Total Estimated Burden Hours: 9,280.
Status: New.
Contact: Jerome B. Friedman, HUD, (202) 708–3176; Joseph F. Lackey, Jr., OMB, (202) 395–6880.

Dated: December 1, 1993.

[FR Doc. 93–29864 Filed 12–7–93; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. D–93–1046; FR–3618–D–01]

Office of the Manager, Richmond Office; Designation of Order of Succession

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of order of succession.

SUMMARY: The Manager is designating officials who may serve as Acting Manager during the absence, disability for vacancy in the position of Manager.

EFFECTIVE DATE: This designation is effective October 19, 1993.

FOR FURTHER INFORMATION CONTACT:

Peter M. Campanella, Regional Counsel, Philadelphia Regional Office, Department of Housing and Urban Development, Liberty Square Building, 105 S. 7th Street, Philadelphia, Pa. 19106–3392, Phone No. (215) 597–2655 (this is not a toll-free number).

DESIGNATION: Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability or vacancy in the position of Manager, with all the powers, functions and duties redelegated or assigned to the Manager: Provided, that no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Deputy Manager
2. Director, Community Planning and Development Division
3. Director, Housing Management Division

4. Director, Housing Development Division
5. Chief Counsel
6. Director, Public Housing Division
7. Director, Fair Housing and Equal Opportunity Division

This designation supersedes the designation effective November 5, 1990 (55 FR 46584).

Authority: Delegation of Authority by the Secretary, 50 FR 18742, May 2, 1985.

Dated: October 19, 1993.

Mary Ann E.G. Wilson,

Manager.

Concur:

Harry W. Staller,

Deputy Regional Administrator—Regional Housing Commissioner.

[FR Doc. 93-29861 Filed 12-7-93; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. D-93-1045; FR-3619-D-01]

Office of the Manager, Tulsa Field Office, Region VI (Fort Worth); Designation

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of order of succession.

SUMMARY: The Manager is designating officials who may serve as Acting Manager during the absence, disability, or vacancy in the position of the Manager.

EFFECTIVE DATE: This designation is effective September 20, 1993.

FOR FURTHER INFORMATION CONTACT: Rita Vinson, Director, Management and Budget Division, Office of Administration, Forth Worth Regional Office, Department of Housing and Urban Development, 1600 Throckmorton, P.O. Box 2905, Forth Worth, TX 76113-2905, Telephone (817) 885-5451 (this is not a toll free number).

DESIGNATION: Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability, or vacancy in the position of the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided that no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Deputy Manager/Chief, Housing Development Branch
2. Chief, Loan Management Branch
3. Chief, Property Disposition Branch

This designation supersedes the published designation effective September 8, 1983, and unpublished designation effective April 24, 1989.

Authority: Delegation of Authority by the Secretary of Housing and Urban Development, effective October 1, 1970; 36 FR 3389, February 23, 1971.

Dated: November 4, 1993.

James S. Colgan,

Manager, Tulsa Office.

Frank L. Davis,

Acting Regional Administrator—Regional Housing Commissioner, Region VI (Fort Worth).

[FR Doc. 93-29862 Filed 12-7-93; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plan for Marsilea villosa, for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for *Marsilea villosa*, a Hawaiian plant. *Marsilea villosa* occurs on the island of O'ahu and Moloka'i, Hawaii.

DATES: Comments on the draft recovery plan must be received on or before February 7, 1994 to receive consideration by the Service.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours, at the following location: U.S. Fish and Wildlife Service, Pacific Islands Office, P.O. Box 50167, Honolulu, Hawaii 96850 (Building Address: 300 Ala Moana Boulevard, room 6307, Honolulu, Hawaii 96813) (telephone 808-541-2749). Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Robert P. Smith, Field Supervisor, at the above Honolulu address. Comments and materials received are available upon request for public inspection, by appointment, during normal business hours, at the above Honolulu address.

FOR FURTHER INFORMATION CONTACT:

Ms. Karen W. Rosa, Fish and Wildlife Biologist, at the Honolulu address given above.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973, as amended, (Act) (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The species being considered in this recovery plan is *Marsilea villosa*. The areas of emphasis for recovery actions for this species are, KoKo Head and Lualualei on O'ahu and Kamaka'ipo on southwestern Moloka'i Recovery efforts will focus on securing habitat and managing it to remove threats by competition from invasive exotic plant species, small population sizes, habitat degradation by off-road vehicles, and, possibly, trampling by cattle. Current populations will be enhanced and new populations will be established.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: November 24, 1993.

Marvin L. Plenert,

Regional Director, U.S. Fish and Wildlife Service, Region 1.

[FR Doc. 93-29873 Filed 12-7-93; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[ID-030-04-4060-05: IDI-30066]

Intent To Prepare Amendment to the Medicine Lodge Resource Management Plan (RMP)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare Amendment to the Medicine Lodge Resource Management Plan (RMP).

SUMMARY: The following described public land in Jefferson County, Idaho, will be examined for possible disposal by direct sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719.

Boise Meridian, Idaho

T. 6 N., R. 33 E.,
Sec. 14;
Sec. 15, E½ and SW¼,

The area described contains 1,120 acres in Jefferson County. This area was formerly part of a Department of Energy (DOE) withdrawal for the Idaho National Engineering Laboratory. The withdrawal was in existence prior to development of the Medicine Lodge RMP and therefore the 1,120 acres was not addressed in the plan. The DOE recently relinquished this acreage to BLM for possible siting of a regional landfill. The amendment is being prepared to evaluate a land tenure adjustment and insure conformance to the existing plan.

An environmental assessment will be completed for this action. If the land is found suitable for disposal, the United States would offer up to 1,120 acres for direct sale to Jefferson County at fair market value. The public is invited to provide scoping comments on the issues that should be addressed in the planning amendment and environmental assessment. Planning criteria which will be used to prepare this planning amendment can be reviewed at the Bureau of Land Management, Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, Idaho.

For a period of 30 days from the date of publication of this notice, interested parties may submit comments to District Manager, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401, (208) 524-7500.

Dated: November 29, 1993.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 93-29903 Filed 12-7-93; 8:45 am]

BILLING CODE 4310-GG-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-349]

Effects of the Arab League Boycott of Israel on U.S. Businesses

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation, scheduling of hearing, and request for comments.

SUMMARY: Following receipt on November 8, 1993, of a request from the United States Trade Representative (USTR), the Commission instituted investigation No. 332-349, Effects of the Arab League Boycott of Israel on U.S. Businesses, under section 332(g) of the Tariff Act of 1930.

EFFECTIVE DATE: December 2, 1993.

FOR FURTHER INFORMATION CONTACT: Constance A. Hamilton (202-205-3263), Trade Reports Division, Office of Economics, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals can obtain further information by contacting the Commission's TDD terminal at 202-205-1810.

BACKGROUND: As requested by the USTR, the Commission will provide a report analyzing the economic costs to U.S. businesses arising from the Arab League boycott of Israel. These costs, defined in the USTR request as reduced U.S. exports and reduced U.S. profits, may include the following:

(a) Lost sales and business opportunities in Arab League countries and/or Israel arising from being blacklisted or from seeking to avoid such blacklisting;

(b) Increased costs of sourcing and transportation resulting from the boycott as well as boycott compliance costs, including legal costs and direct and indirect costs associated with compliance with anti-boycott laws;

(c) Distorted or foregone investments in either the Arab or Israeli markets resulting from the boycott as well as investment diverted from or denied to blacklisted U.S. businesses due to association with Israel.

The request letter notes that the Commission may need to undertake an assessment of the scope of the boycott, the degree of enforcement on a country by country basis, and the degree of compliance with the boycott by U.S. businesses.

As requested by the USTR, the Commission expects to submit its report to the USTR in November 1994.

PUBLIC HEARING: A public hearing in connection with the investigation will be held in the Commission hearing room, 500 E Street, SW., Washington, DC 20436, beginning at 9:30 a.m. on March 17, 1994. All persons have the right to appear by counsel or in person to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436 no later than noon, March 9, 1994. The deadline for filing prehearing briefs (original and 14 copies) is March 9, 1994. Posthearing briefs are due on March 31, 1994.

WRITTEN SUBMISSIONS: In addition to or in lieu of filing prehearing or posthearing briefs, interested parties are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than April 4, 1994. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

By order of the Commission.

Issued: December 2, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93-29965 Filed 12-7-93; 8:45 am]

BILLING CODE 7020-02-P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-32 (Sub-No. 55X)]

Boston and Maine Corp.—Abandonment Exemption—Berkshire County, MA

[Docket No. AB-355 (Sub-No. 7X)]

Springfield Terminal Railway Co.—Discontinuance of Service Exemption—Berkshire County, MA

Boston and Maine Corporation (BM) and Springfield Terminal Railway Company (ST) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances to abandon and discontinue service over 1.00 mile of railroad known as the Adams Branch, from milepost 13.00, to milepost 14.00 all in Adams, Berkshire County, MA. BM seeks authority to abandon the line, and ST, which leases the line from BM, seeks authority to discontinue service over the line.

BM and ST certify that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment or discontinuance shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expressions of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 5, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by December 16, 1993.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 27, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicants' representative: Kevin J. O'Connell, Esq., Law Department, Iron Horse Park, North Billerica, MA 01862.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

BM and ST have filed an environmental report which addresses the effect, if any, of the abandonment and the discontinuance on the environmental or historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by December 10, 1993. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927-5449. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 1, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-29920 Filed 12-7-93; 8:45 am]

BILLING CODE 7035-01-P

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement as long as it retains jurisdiction to do so.

[Docket No. AB-167 (Sub-No. 1113X)]

Consolidated Rail Corp.—Abandonment Exemption—In Elizabeth, Union County, NJ

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon 0.18± miles of rail line, known as the Elizabeth Industrial Track, from approximately milepost 11.46±, a point 100 feet east of Broad Street, to approximately milepost 11.64±, a point 100 feet west of the Elizabeth River.[1]

Conrail has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; (2) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (3) that the requirements at 49 CFR 1105.7 (service of environmental report on agencies); 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer); 49 CFR 1105.11 (transmittal letter); 49 CFR 1105.12 (newspaper publication); and 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 7, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2]

[1] On November 18, 1993, Conrail supplemented the record to advise the Commission and interested parties that The Delaware and Hudson Railway Company, Inc. (D&H) maintains overhead trackage rights over the line. We interpret this to mean that D&H has no local trackage rights on the line. In Missouri Pac. R. Co.—Aban.—Osage & Morris Count., KS, 9 I.C.C.2d 1228 (1993), the Commission held that a railroad that certifies that there has been no local traffic on the line, including that of the railroad with trackage rights, can use the exemption procedures to abandon the line without the holder of trackage rights receiving discontinuance authority subject to certain conditions.

Accordingly, because of D&H's existing trackage rights, Conrail may only discontinue service at this time. The effectiveness of this notice as to the abandonment will be contingent upon: (1) D&H obtaining Commission approval or exemption to discontinue its trackage rights; and (2) Conrail informing any party requesting public use or trail use if and when such trackage rights are discontinued. See Id. Requests for public use or trail use conditions will not be acted upon until D&H has relinquished its trackage rights.

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's

Continued

formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by December 20, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 28, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Robert S. Natalini, Associate General Counsel, Consolidated Rail Corporation, Two Commerce Square, 2001 Market Street, P.O. Box 41416, Philadelphia, PA 19101–1416.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by December 13, 1993. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 3, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–29966 Filed 12–7–93; 8:45 am]

BILLING CODE 7035–01–P

[3] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Docket AB–290 (Sub-No. 136X)]

Durham and South Carolina Railroad Co.—Abandonment Exemption— In Durham County, NC

Durham and South Carolina Railroad Company (DSC) has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon its 4.3-mile line of railroad between milepost DD–33.7 at South Durham and milepost DD–38.0 at D&S Junction, in Durham County, N.C.

DSC has certified that: (1) No traffic has originated, terminated, or moved overhead on the line for at least 2 years; (2) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (3) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 7, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by December 20, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 28, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.[4]

A copy of any petition filed with the Commission should be sent to applicant's representative: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by December 13, 1993. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 2, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–29921 Filed 12–7–93; 8:45 am]

BILLING CODE 7035–01–P

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment— Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement as long as it retains jurisdiction to do so.

[4] Under the Commission's regulations at 49 CFR 1152.50(d)(3), this exemption notice should have been published by December 5, 1993. Because of a power failure induced by flooding, the Commission was closed on November 29 and 30, 1993, and was unable to arrange for publication of the notice before December 5. The appellate procedure has been adjusted accordingly.

[Ex Parte No. 290 (Sub-No. 4)]

Railroad Cost Recovery Procedures—Productivity Adjustment

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision.

SUMMARY: The Commission intends to incorporate its estimate of railroad productivity change for 1990, 1991 and 1992, along with previously calculated data, into a 1988–1992 (5-year) average. The Commission will apply that 5-year average starting with the first quarter 1994 Rail Cost Adjustment Factor

(RCAF). Estimated average productivity growth is 1.056 (5.6%) for 1990, 0.912 (a negative 8.8%) for 1991 and 1.190 (19.0%) for 1992. Estimated annual productivity for the 5-year 1988–1992 period is 1.050 (5.0% per year). Now that the productivity computation method is settled, the Commission sees no need to publish calculations in advance in a separate decision. Rather, the productivity calculation will be published in the first quarter decision in Ex Parte No. 290 (Sub-No. 5).

DATES: Comments are due December 23, 1993.

FOR FURTHER INFORMATION CONTACT: Leslie J. Selzer (202) 927–6181, or Robert C. Hasek (202) 927–6239. [TDD for hearing impaired (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The Rail Cost Adjustment Factor is a quarterly index that measures changes in railroad expenses. A productivity adjustment is used to adjust the quarterly Rail Cost Adjustment Factor for productivity improvements.

Pursuant to 5 U.S.C. 605(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD Services at (202) 927–5721.]

Decided: November 23, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–29919 Filed 12–7–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Office of the Secretary

Commission on the Future of Worker-Management Relations; Notice of Regional Hearing by Working Party

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of public hearing.

The Commission on the Future of Worker-Management Relations has scheduled a regional hearing in Boston, Massachusetts on Wednesday, January 5, 1994 from 9 a.m. to 1 p.m. before a working party of Commission members to hear the views of interested organizations and individuals on issues before the Commission. The session will be held at Gardner Auditorium, State House, Boston.

If a representative of an organization or an individual wishes to be heard, a request in writing should be sent to John T. Dunlop, Chairman, Commission on the Future of Worker-Management Relations, 208 Littauer Center, Harvard University , Cambridge, Massachusetts 02138. (Telephone 617–495–4157; Fax 617–495–7730). This request should indicate the general subject matter and nature of the testimony and should be submitted no later than December 20, 1993. If there is insufficient time to hear all requests, the Commission will receive written statements. A transcript of the testimony will be made for all Commission members and for the public record. The Commission will advise the individuals or representatives of organizations whether the schedule will accommodate their presentation and the length of time allocated. The mission statement of the Commission and a memorandum prepared for regional hearings defining in more detail issues of interest to the Commission is available on request.

PUBLIC PARTICIPATION: The regional hearing will be open to the public and in session from 9 a.m. to 1 p.m. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact the Commission to obtain appropriate accommodations.

FOR FURTHER INFORMATION, CONTACT: June M. Robinson (Telephone 202–219–9148; Fax 202–219–9167 .

Signed at Washington, DC, this 2nd day of December, 1993.

June M. Robinson,

Designated Federal Official for the Commission on the Future Worker-Management Relations.

[FR Doc. 93–29890 Filed 12–7–93; 8:45 am]

BILLING CODE 4510–23–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Revision.

2. The title of the information collection: Final Rule, 10 CFR Part 26. "Modification to Fitness-For-Duty Program Requirements."

3. The form number if applicable: Not applicable.

4. How often the collection is required: On occasion.

5. Who will be required to report: Nuclear power plant licensees and licensees who are authorized to possess, use, or transport formula quantities of strategic special nuclear material.

6. An estimate of the number of reports annually: A reduction of 76,000 drug tests and associated records.

7. An estimate of the total number of hours needed annually to complete the requirement: 16,467 hours of burden reduction (an average of 223 hours of burden reduction per site).

8. An indication of whether section 3504(h), Public Law 96–511 applies: Applicable.

9. Abstract: 10 CFR part 26 of NRC's regulations, "Fitness-for-Duty Programs," requires licensees authorized to construct or operate a nuclear power reactor and licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM) to implement fitness-for-duty programs to assure that personnel are not under the influence of any substance or mentally or physically impaired, to retain certain records associated with the management of these programs, and to provide reports concerning significant events. An amendment to this regulation permits licensees to reduce the random testing rate of their employees and contractor and vendor employees for drugs and alcohol to 50 percent. The requirements of part 26 are mandatory for the affected licensees.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level). Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer: Tim Hunt, Office of Information and Regulatory Affairs (3150–0146), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 30th day of November, 1993.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 93-29925 Filed 12-7-93; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is temporarily identified as DG-5006, "Protection Against Malevolent Use of Vehicles at Nuclear Power Plants," and is intended for Division 5, "Materials and Plant Protection." DG-5006 is being developed to provide guidance acceptable to the NRC staff on protecting nuclear power plants against the malevolent use of vehicles at nuclear power plant sites.

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. The draft guide has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by January 3, 1994.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 24th day of November 1993.

For the Nuclear Regulatory Commission.

Lloyd J. Donnelly,

Director, Financial Management, Procurement and Administration Staff, Office of Nuclear Regulatory Research.

[FR Doc. 93-29924 Filed 12-7-93; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 15, 1993, through November 26, 1993. The last biweekly notice was published on November 24, 1993 (58 FR 62149).

Notice of consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By January 7, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be

affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: November 2, 1993

Description of amendments request: The proposed amendments would revise the Calvert Cliffs Nuclear Power Plant, Units 1 and 2, Technical Specifications (TSs) regarding surveillance requirements associated with the emergency diesel generators (EDGs). The EDGs are used to provide electrical power for the operation of Engineered Safety Features (ESF) and safe shutdown equipment for events involving a loss of offsite power. Should a loss of power be sensed on one of the 4160 volt ESF busses, the EDGs will automatically start and power equipment needed to safely shut the Unit down. If an accident condition is present, the EDG will start, but will only supply power to the ESF busses if offsite power is lost.

Specifically, the requested changes are:

1. TS 4.8.1.1.2.d - This change to the TSs extends the interval from 18 months to the current refueling interval of 24 months for the surveillances listed under 4.8.1.1.2.d. The provisions of Specification 4.0.2 would continue to apply to this specification.

2. TS 4.8.1.1.2.a.4 - This change removes the requirement to verify a

specific EDG speed of 900 revolutions per minute (rpm). The requirement to verify the frequency assures that the proper speed is achieved.

3. TS 4.8.1.2 - This change adds the EDG surveillances dealing with sequencer testing to the list of surveillances that can be exempted in Modes 5 and 6.

4. TS 4.8.1.1.2.d.5 - This change eliminates the specific numerical reference of 2700 kW associated with the 2000 hour rating of an EDG being tested.

5. TS 4.8.1.1.2.c and 4.8.1.1.2.d.3.b - This change will allow the EDGs to be pre-lubricated prior to being started which is in accordance with vendor recommendations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Calvert Cliffs Emergency Diesel Generators (EDGs) are used to provide electrical power for the operation of Engineered Safety Features (ESF) and safe shutdown equipment for events involving a loss of offsite power. Should a loss of power be sensed on one of the 4160 volt ESF busses, the EDGs will automatically start and power equipment needed to safely shut the Unit down. If an accident condition is present, the EDG will start, but will only supply power to the ESF busses if offsite power is lost.

The proposed changes will modify several Technical Specification Surveillances associated with testing of the EDGs.

Technical Specification 4.8.1.1.2.d verifies the overall condition of the EDG is acceptable. A major maintenance inspection and several tests involving starting and loading the EDG are performed every 18 months (old refueling interval) in accordance with the surveillance. An evaluation was conducted to determine if the surveillance interval could be extended from 18 months to 24 months (current refueling interval). The evaluation concluded there were no problems attributed to time dependence. Extending the interval to 24 months will eliminate the need for a special outage after 18 months, thus eliminating the possibility of encountering plant transients associated with a plant shutdown and startup. Extending the surveillance interval to 24 months will not significantly increase the probability of the EDG failing to operate as assumed in previously evaluated accidents.

Additionally the EDGs are not initiators to any previously evaluated accident. Therefore, extending the surveillance interval will not increase the consequences of an accident previously identified.

Two of the requested surveillance changes remove specific values and do not alter the intent of the surveillances. Technical Specification 4.8.1.1.2.a.4 verifies the EDG reaches 900 rpm rated speed after being started. Speed and frequency are directly related and the critical parameters that should be monitored closely are frequency and voltage. Removal of the specific value for speed will have no effect on surveillance results. Technical Specification 4.8.1.1.2.d.5 verifies the auto-connected accident loads powered by the EDG do not exceed the EDGs' 2000 hour capacity rating. Modifications to increase the EDGs' capacity will be performed in future outages. To reflect this capacity change, the current value of 2700 kW listed in the Technical Specification should be removed. The actual surveillance steps and intent will remain unchanged. Therefore, these changes would have no effect on the probability or consequences of an accident previously evaluated.

The Technical Specifications require two EDGs to be operable in Modes 1-4, and one EDG in Modes 5 and 6. The EDG surveillances performed in Modes 5 and 6 are identical to those performed in Modes 1-4, yet plant conditions are quite different. The instrumentation that detects a loss of voltage on the 4160 volt busses is not required in Modes 5 and 6 and much of the ESF equipment is not required to be operable. The proposed change would modify Technical Specification 4.8.1.2 to reflect the status of plant conditions and equipment when the unit is shutdown. The EDG loss-of-coolant incident sequencer which is designed to load ESF and equipment needed to safely shutdown the plant do not need to be tested when the unit is already shutdown. The undervoltage instrumentation signals required to initiate sequencer action are not credited in the Updated Final Safety Analysis Report (UFSAR) for events which occur during shutdown modes. Therefore, eliminating sequencer testing for operability in the shutdown modes will have no effect on the probability or consequences of accidents previously evaluated.

Emergency Diesel Generator reliability and availability will be maintained if wear and stress are reduced when the EDGs are started. Proper warm-up and pre-lubrication techniques, as recommended by the vendor, will help minimize the potential for degradation. Reliable EDG starts due to actual losses of power on 4160 volt busses prove their capability to perform their required safety function.

Therefore, the above proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed changes do not represent a significant change in the configuration or operation of the plant.

These changes represent clarifications and improvements to the Technical Specification surveillances only and do not affect assumptions associated with the EDGs in the UFSAR. The changes will modify surveillance requirements such as the verification of a specific value (900 rpm, 2700 kW) and frequency of the surveillance (18 to 24 months, Modes 5 and 6 testing). The changes will not alter the intent or method in which the surveillance is conducted.

Allowing pre-lubrication for planned fast starts does change the current test method, but will help maintain EDG reliability.

Therefore, the proposed changes do not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The proposed changes do not affect the margin of safety credited to the EDG function. The EDG will continue to provide power to ESF and safe shutdown components as stated in the UFSAR. The availability of the EDGs will not be reduced by these changes and the intent of the surveillances will be preserved.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: November 3, 1993

Description of amendments request: The proposed amendments would revise the Calvert Cliffs Nuclear Power Plant, Units 1 and 2, Technical Specifications (TSs) by modifying the surveillance requirements to reflect the removal of the auto-closure interlock (ACI) function from the shutdown cooling (SDC) system. The SDC system is used to achieve and maintain the reactor coolant system (RCS) in cold shutdown by removing decay heat from the reactor core following shutdown of the reactor. The ACI is designed to provide a close signal to the SDC system suction isolation valves when the RCS pressure exceeds a predetermined pressure setpoint. A generic evaluation demonstrated that removing the ACI function and replacing it with a valve position alarm will reduce the number of spurious closures of the SDC system suction isolation valves which in turn will increase the system availability and result in an overall decrease in shutdown risk. The generic evaluation

was supplemented by a plant specific evaluation for the Calvert Cliffs facility which provided the same results.

The proposed amendments also revise the setpoint for the open permissive interlock (OPI) which is designed to prevent opening of the SDC system suction isolation valves when the RCS pressure is above the setpoint. The proposed setpoint is based on the pressurizer pressure at the instrument tap and accounts for instrument uncertainties.

Specifically, TS 3/4.5.e.1 is changed to require verification that the OPI prevents the SDC system suction valves from being opened when the RCS pressure is greater than or equal to 309 psia. The requirement to verify the automatic isolation (the ACI function) is deleted. The TS Bases Section B 3/4 5.2 is changed to reflect the proposed changes discussed above.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Calvert Cliffs Shutdown Cooling (SDC) System is used to achieve and maintain the Reactor Coolant System (RCS) in cold shutdown condition by removing the decay heat from the reactor core following plant shutdown. The Auto-Closure Interlock (ACI) is designed to provide a close signal to the SDC System suction isolation valves when the RCS pressure exceeds the predetermined pressure setpoint. This proposed change would modify Technical Specification Surveillance Requirement 4.5.2.e.1 to reflect removal of the ACI function. The Open Permissive Interlock (OPI), which is designed to prevent opening of the SDC System suction isolation valves when RCS pressure is above the pressure setpoint, would remain. The removal of ACI was evaluated generically in the report CE NSPD-550 in terms of the availability of the SDC System. This generic evaluation has been supplemented by a plant-specific evaluation for Calvert Cliffs. The evaluation demonstrated that removing ACI and replacing it with a valve position alarm will reduce the number of spurious closures of the SDC System suction isolation valves and thus increase the availability of the SDC System, resulting in a corresponding decrease in shutdown risk. Revising the OPI action from 300 psia to 309 psia is a result of establishing a clear basis for this value. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The report CE NSPD-550 also evaluated the removal of the SDC System ACI in terms of the frequency of an inter-system Loss of Coolant Accident (ISLOCA) and the effect on overpressure transients. The plant-specific evaluation for Calvert Cliffs showed a negligible change in the calculated probability of an ISLOCA event associated with ACI removal. The proposed change to remove the ACI surveillance requirement and the setpoint change will not alter the effect of an overpressure transient at cold shutdown conditions. The ACI was intended to ensure that the SDC System is properly isolated from RCS pressure during start-up operations. The ACI function does not protect against a malfunction of the valve which results in its failure to close. The valve position alarm will warn the operator of a failure to manually close the valve as well as a valve malfunction. While it is true that the ACI initiates an auto-closure of the SDC System suction isolation valves on high RCS pressure, overpressure protection of the SDC System is provided by the SDC System relief valve and administrative controls, and not by the slow-acting suction isolation valves that isolate the SDC System from the RCS. The possibility of a loss of SDC System is reduced by the proposed change because the potential of the SDC System suction isolation valves being closed by a spurious signal will be eliminated. No other failures are introduced by removing ACI. [Also, revising the OPI action does not introduce a new or different type of accident.] Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The ACI function is not credited in a margin of safety for any accident previously evaluated and is not discussed in the basis for Technical Specification 3/4.5.2. The ACI function is intended to provide a backup to the operator action of closing the SDC System suction isolation valves during plant pressurization. The evaluation of CE NSPD-550 and the Calvert Cliffs plant-specific evaluation indicates that the availability of the SDC System is increased with removal of ACI. In place of ACI, the installation of new visual and audible alarms in the control room, along with procedural changes and operator training, will reduce shutdown risk for the plant by eliminating the possibility of a spurious signal closing the SDC System suction isolation valves during shutdown cooling operation. Revising the OPI action limit is a result of establishing a clear basis for this value. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: November 3, 1993

Description of amendments request: The proposed amendments would revise the Calvert Cliffs Nuclear Power Plant, Units 1 and 2, Technical Specifications (TSs) by eliminating the TSs that are applicable to the incore instrument (ICI) system. The limitations on the use of the ICI system will be relocated to the Updated Final Safety Analysis Report (UFSAR). The ICI system is used to measure core power distribution for the purpose of monitoring the TS limits on Linear Heat Rate, Total Planar Radial Peaking Factor, Total Integrated Radial Peaking Factor, and Azimuthal Power Tilt. The ICI system has no safety purpose itself; it only measures values which have safety significance. No change to the monitored values is proposed. The proposed change will relocate requirements on the number and distribution of incore detectors used by the ICI system when measuring these values from the TSs to the UFSAR. The licensee has determined that the requirements on the ICI system are not constraints on design and operation which belong in the TSs. In addition, NUREG-1432, "Standard Technical Specifications for Combustion Engineering Plants," does not include TS requirements on the ICI system.

Specifically, the following changes are proposed:

(1) TS 3/4.3.3, which provides the requirements for the incore detectors is deleted.

(2) TS 3/4.2.1.4.b is revised to remove uncertainty factors which are applied to the ICI system.

(3) TSs 3.2.1, 4.2.1.4, 3.2.2.1, 4.2.2.1, 3.2.3 and 4.2.3.2.b are revised to remove the cycle specific foot notes.

(4) The Table of Contents and TS Bases Section 3/4.3 are revised to reflect the proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Incore Instrument (ICI) System is used to measure core power distribution for the purpose of monitoring the technical specification limits on Linear Heat Rate, Total Planar Radial Peaking Factor, Total Integrated Radial Peaking Factor, and Azimuthal Power Tilt. The ICI System has no safety purpose itself; it only measures values which have safety significance. No change to the monitored values is proposed. The proposed change will relocate requirements on the number and distribution of incore detectors used by the ICI System when measuring these values from the Technical Specifications to the Updated Final Safety Analysis Report (UFSAR). This will allow changes to the requirements to be made without Commission approval as long as the changes meet the criteria of 10 CFR 50.59. Changes to the ICI System requirements which do not meet the criteria of 10 CFR 50.59 must be approved by the Commission by license amendment.

Relocation of the requirements on the ICI System from the Technical Specifications to the UFSAR does not increase the probability or consequences of any accident previously analyzed because the ICI System is neither a precursor or a mitigator for any analyzed accident. The ICI System is not credited in any safety analysis. The values measured by the ICI System are important parameters in many accident analyses; however, this proposed change does not remove or affect the limits on these values.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed change does not represent a change in the configuration or operation of the plant. The ICI System will continue to be used to monitor Technical Specification limits on core power distribution. The core power distribution Technical Specification limits are not changed.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The ICI System makes no contribution to the margin of safety. The ICI System is used to measure core power distribution values which do contain a margin of safety. The limits on these values are not changed.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee. Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: November 5, 1993

Description of amendments request: The proposed amendment consists of two related changes. The first change modifies the Calvert Cliffs containment penetration technical specifications (TSs) to resemble the containment penetration TS in NUREG-1432, "Standard Technical Specifications for Combustion Engineering Pressurized Water Reactors" (STS). The second change allows the containment personnel airlock to be open during fuel movement and core alterations.

Specifically, the first change revises Specification 3.9.4, "Containment Penetrations, Shutdown" to make it consistent with the same Specification in the STS. It deletes "positive reactivity changes" and "movement of heavy loads over irradiated fuel within the containment building" from the Applicability, Actions, and Surveillance sections. In addition, the Applicability and Surveillance sections are revised by removing references to "degraded electrical conditions" and substituting equivalent actions in lieu of references to Specification 3.9.4 in Specifications 3.8.1.2, 3.8.2.2, and 3.8.2.4.

The second change revises Specification 3.9.4, "Containment Penetrations, Shutdown," to allow the containment personnel airlock (PAL) to be open during fuel movement and core alterations provided that one PAL door is operable, the plant is in MODE 6 with 23 feet of water bove the fuel, and a designated individual is continuously available to close the airlock door. This individual must be stationed at the Auxiliary Building side of the outer airlock door.

Consistent with STS, features required for PAL operability are given in the Bases. The Bases state that in order for a PAL door to be operable, it must be capable of being closed and the airlock doorway must not be blocked. In addition, Specification 3.9.3, "Decay Time," is modified to lengthen the minimum time between subcriticality and fuel movement from 72 hours to 100 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Change 1 - Modify The Calvert Cliffs Containment Penetration Technical Specifications To Resemble The Standard Technical Specifications

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The only previously evaluated accident affected by containment penetration status during shutdown is a fuel handling accident in the containment. Containment penetration closure is required during periods when the plant is shutdown and the risk of a fuel handling accident is higher in order to minimize the release of radioactive material due to such an accident. The proposed change modifies the conditions of Specification 3.9 4 regarding when containment penetration closure is required in order to make the Calvert Cliffs technical specification resemble the Standard Technical Specifications, Combustion Engineering Plants (NUREG-1432). This involves eliminating applicability of the specification during periods of positive reactivity addition, movement of heavy loads over irradiated fuel in the containment, and periods of electrical degradation. Containment penetrations are not an initiator to any accident so the status of containment penetrations has no affect on the probability of an accident previously evaluated.

Two applicability conditions of Specification 3.9.4, "positive reactivity additions" and "movement of heavy loads of irradiated fuel in the containment," are not needed because equivalent protection is provided by Specifications 3.9.1, "Refueling Boron Concentration," and by previous analysis of control of heavy loads. The actions to be taken during electrical degradation have been relocated from Specification 3.9.4 to the electrical specifications (Technical Specifications 3.8.1.2, 3.8.2.2, and 3.8.2.4). Therefore, the proposed changes provide a level of protection against radioactive release from the containment during shutdown conditions equivalent to the existing specifications.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed changes to Specification 3.9.4 will provide a level of protection against radioactive release from the containment equivalent to the current specifications. It does not represent a significant change in the configuration or operation of the plant which could create the possibility of a new type of accident. Positive reactivity changes which could potentially violate the required shutdown margin were evaluated in determining the technical specification limit for refueling boron concentration (Specification 3.9.1), and movement of heavy loads over irradiated fuel has been previously evaluated in our response to NUREG-0612, "Control of Heavy Loads." Actions to be taken during periods of electrical degradation have been relocated

within the technical specifications but remain unchanged.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The proposed changes will eliminate some conditions when containment penetration closure is required. This could allow the release of radioactivity from containment. However, for each eliminated condition there is an existing equivalent or more restrictive requirement which would prevent events which would result in a radioactive release. Therefore, there will be no increase in offsite dose and the margin of safety is maintained.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Change 2 - Modify The Calvert Cliffs Containment Penetration Technical Specifications To Allow The Containment Personnel Airlock To Be Open During Fuel Movement And Core Alterations

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to Specification 3.9.4 would allow the containment personnel airlock (PAL) to be open during fuel movement and core alterations. The PAL is closed during fuel movement and core alterations to prevent the escape of radioactive material in the event of a fuel handling accident. The PAL is not an initiator to any accident. Whether the PAL doors are open or closed during fuel movement and core alterations has no affect on the probability of any accident previously evaluated.

Allowing the PAL doors to be open during fuel movement and core alterations does increase the consequences of a fuel handling incident in the containment from no offsite dose to 14.06 Rem to the thyroid and 0.457 Rem to the whole body. However, the calculated offsite doses are less than 5% of the limits of 10 CFR Part 100 and, therefore, do not represent a significant increase in offsite dose. In addition, the calculated doses are larger than the expected doses because the calculation does not incorporate the closing of the PAL door after the containment is evacuated. The proposed change will significantly reduce the dose to workers in the containment in the event of a fuel handling accident by speeding the containment evacuation process. The proposed change will also significantly decrease the wear on the PAL doors and, consequently, increase the availability of the PAL doors in the event of an accident.

The proposed change increases the minimum decay time from shutdown to the movement of irradiated fuel in containment. Minimum decay time is not a precursor to any accident. Lengthening the minimum decay time decreases the consequences of a fuel handling accident by reducing the radioactive inventory of the irradiated fuel.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed change affects a previously evaluated accident, e.g., a fuel handling incident. It does not represent a significant change in the configuration or operation of the plant and, therefore, does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The margin of safety as defined by 10 CFR Part 100 has not been significantly reduced. There is an increase in calculated offsite dose resulting from a fuel handling accident but the increase is a small fraction of the limits given in 10 CFR Part 100. The proposed change also increases the minimum decay time from shutdown to the movement of irradiated fuel in containment. This change reduces the offsite dose in the event of a fuel handling accident which partially compensates for the higher offsite doses under this proposed change. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: October 19, 1993

Description of amendment request: The proposed amendment would remove the Low Condenser Vacuum Scram (LCVS) and reduce the turbine first stage pressure setpoint at which it is permissible to bypass the turbine control valve fast closure and the turbine stop valve closure trip (scram) signals.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The Operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

REMOVAL OF LOW VACUUM SCRAM

The LCVS is not required to ensure the safe operation of Pilgrim Station. The LCVS is provided to anticipate the reactor scram associated with the turbine trip caused by low condenser vacuum, (Reference: "PNPS Final Safety Analysis Report," Section 7.2.3.8) and is not relied upon in the plant transient analysis. PNPS [Pilgrim Nuclear Power Station] FSAR [Final Safety Analysis Report], Section R.2.1.2 explains that an instantaneous loss of vacuum is the most severe vacuum transient and is equivalent to a turbine trip without bypass. Slow vacuum transients allow for some bypass steam flow (the bypass shuts at 7 inches of vacuum) and thus results in less severe transients. In addition, the "PNPS Reload Analysis" (NEDE-24011-P-A-4-US, Standard Application for Reactor Fuel) does not take credit for LCVS. PNPS FSAR, "Section 14.4" includes low vacuum transients under turbine trip without bypass. Since this turbine trip scram will remain, and since the LCVS is intended to anticipate the turbine trip scram as well as not being a distinct element of the accident analysis, instrumentation associated with the LCVS will be removed from Pilgrim and the scram will no longer exist. Removal of the LCVS from Technical Specifications and from Pilgrim will not result in a significant increase in the probability or consequences of an accident previously evaluated but will reduce the possibility of spurious scrams.

REVISION OF TURBINE FIRST STATE PRESSURE SCRAM SETPOINT

The scram signal generated by closure of the TSVs [turbine stop valves] or fast closure of the TCVs [temperature control valves] preserve sufficient thermal margin for pressurization transients at high core thermal powers. At core thermal powers below 45% of rated, the severity of pressurization transients is reduced such that these scram signals are no longer required, the reactor high-pressure and high-flux scram setpoints provide protection for the reactor as described in PNPS FSAR Section 7.2. These scram signals are bypassed in the interest of improved plant availability when thermal margin considerations permit.

The Pilgrim Reactor Protection (RPS) uses the high-pressure turbine section first-stage bowl pressure rather than core thermal power to determine when the scram signals generated by closure of the TSVs or fast closure of the TCVs can be bypassed. Turbine bowl pressure is proportional to core thermal power and is also related to the balance-of-plant (BOP) configuration. Therefore, the maximum bowl pressure above which the scram signals cannot be bypassed must correspond to 45% of rated core thermal power for the most limiting balance-of-plant configuration.

A reduction in the degree of feedwater heating results in a decreased turbine bowl pressure for a particular core thermal power. Hence, the limiting balance-of-plant configuration for this evaluation assumes all feedwater heaters are out-of-service. In addition to the degree of feedwater heating, the bowl pressure is also affected by the amount of turbine bypass flow. Bypassing flow around the turbine further reduces the

bowl pressure for a particular core thermal power and feedwater heater configuration. However, General Electric analysis, "EAS-53-0587, Rev. 1", shows the limiting balance-of-plant configuration does not need to consider opened turbine bypass valves, because, with these valves opened, the consequences of design-basis transients are acceptable without scram signals being generated upon closure of the TSV's or fast closure of the TCV's, even at core thermal powers greater than 45% of rated.

Based on the above considerations and to provide added conservatism to minimize the possibility of lifting the SRV's after a Turbine Trip at low power, the maximum turbine first stage bowl pressure permitting scram signal bypass is determined to be 112 psig. Changing the currently allowed maximum of 305 psig to 112 psig brings the specified datum into conformance with Pilgrim's design and, thereby, does not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

LCVS is not part of the Pilgrim Station design basis. Its removal from technical specifications does not, therefore, present any new or different challenges to the integrity or responses of systems designed to prevent or mitigate an accident. Hence, the removal of LCVS from technical specifications and from Pilgrim will not create the possibility of a new or different kind of accident from any accident previously evaluated because its removal does not degrade existing systems and because its function is enveloped by the turbine trip scram that remains in technical specifications.

The proposed change to the allowable maximum pressure setpoint results from a recalculation of maximum allowable scram bypass pressure that ensures Pilgrim is operated within the boundaries established to prevent or mitigate the effects of certain accident sequences described in the FSAR.

Hence, the proposed change supports the existing Pilgrim analysis and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

Removal of LCVS will not increase the probability of occurrence or the consequences of a loss-of-vacuum transient because the low vacuum turbine trip scram provides sufficient protection to prevent plant damage and offsite consequences. The turbine trip is also a more direct variable for reactor protection. Therefore, LCVS is not a distinct element of Pilgrim's accident analysis and its removal does not impact Pilgrim's safety margin. Hence, removal of LCVS from technical specifications will not involve a significant reduction in the margin of safety.

The proposed amendment also maintains the margin of safety as defined by Pilgrim's safety analysis by changing the existing maximum allowable turbine first stage pressure permitting scram bypass from 305 psig to the more conservative 112 psig. The change is proposed because information supplied by Pilgrim's NSSS [nuclear steam system supplier]

[* * *] required recalculation of this setpoint to support the margin of safety under conditions and considerations discussed in the above item 1B1. Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Walter R. Butler

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: September 27, 1993

Description of amendment request: The proposed amendment would modify Technical Specification (TS) section 6.3.1, Unit Staff Qualifications, to make that section consistent with the current requirements of Part 55 of Title 10 of the Code of Federal Regulations (10 CFR 55). The proposed amendment would also delete TS section 6.4.1, Training, because the requirements associated with training are now contained in 10 CFR 55 and 10 CFR 50.120.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification changes are administrative changes to eliminate inconsistencies with the current regulations for unit staff qualifications and training programs. The proposed changes are being made to remove language describing or committing to any previous training programs, since the training programs at PNPP have been accredited and certified in accordance with the revised 10 CFR 55 and 10 CFR 50.120 rules, GL 87-07 and NUREG-1262. The proposed changes delete reference to the March 28, 1980, NRC letter (the Denton Letter) for licensed operator qualifications and training programs and, for licensed operator qualifications, will substitute compliance with the requirements of 10 CFR 55. The proposed changes also include the deletion of Specification 6.4.1 "Training," since training of both licensed operators and other appropriate unit staff personnel is now governed by regulations (10 CFR 55 and 10 CFR 50.120).

The proposed changes will have no significant adverse impact on accident probability or consequence. The NRC, during the rulemaking process, has considered any impact that licensed operator qualifications and training programs may have on accidents previously evaluated, and by promulgation of the revised 10 CFR 55 rule, concluded that this impact remains unchanged as long as licensed operator training programs are certified to be accredited and based on a systems approach to training in accordance with GL 87-07. CEI provided such certification for PNPP Unit 1 by letter PY-CEI/NRR-0866L dated June 9, 1988. The proposed Technical Specification changes take credit for the INPO accreditation of the licensed operator and other nuclear power plant personnel training programs, and continued compliance with the requirements of 10 CFR 55 and 10 CFR 50.120 is required regardless of any reference to them within the Technical Specifications. Therefore, the proposed changes do not increase the probability or consequences of an accident previously evaluated.

(2) The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed Technical Specification changes are administrative changes to eliminate inconsistencies with the current regulations for qualifications and training programs. The NRC, during the rulemaking process, has considered any impact that licensed operator qualifications and training programs may have on the possibility of a new or different kind of accident from any accident previously evaluated, and by promulgation of the revised 10 CFR 55 rule, concluded that this impact remains unchanged as long as licensed operator training programs are certified to be accredited and based on a systems approach to training in accordance with GL 87-07. CEI provided such certification for PNPP Unit 1 by letter PY-CEI/NRR-0866L dated June 9, 1988. The proposed Technical Specification changes take credit for the INPO accreditation of the licensed operator and other nuclear powerplant personnel training programs, and continued compliance with the requirements of 10 CFR 55 and 10 CFR 50.120 is required regardless of any reference to them within the Technical Specifications. Additionally, the proposed Technical

Specification changes do not affect plant design, hardware, system operation, or procedures. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed Technical Specification changes are administrative changes to eliminate inconsistencies with the current regulations for qualifications and training programs. The licensed operator qualifications and training programs will continue to be required to comply with the requirements of 10 CFR 55. The NRC, during the rulemaking process, has considered any impact that licensed operator qualifications and training programs may have on the margin of safety, and by promulgation of the revised 10 CFR 55 rule, concluded that this impact remains unchanged when licensees certify that their licensed operator training programs are accredited and based on a systems approach to training in accordance with GL 87-07. CEI provided such certification for PNPP Unit 1 by letter PY-CEI/NRR-0866L dated June 9, 1988. The NRC has concluded, as stated in NUREG-1262, that the standards and guidelines applied by INPO in their training accreditation program are equivalent to those put forth or endorsed by the NRC. As a result, maintaining INPO accredited systems based licensed operator training programs is equivalent to maintaining NRC approved licensed operator training programs which conform with applicable NRC RGs or NRC endorsed ANSI/ANS standards. The margin of safety is maintained by virtue of maintaining INPO accredited licensed operator and other nuclear power plant personnel training programs and through continued compliance with the requirements of 10 CFR 55 and 10 CFR 50.120. Therefore, the proposed changes do not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John N. Hannon

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: November 4, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications by changing the steam generator safety valve surveillance frequency and acceptance criteria.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The probability of an accident previously evaluated has not been increased. The proposed change does not change the fundamental function or capability of the MSSVs [Main Steam Safety Valves] as described in the UFSAR [Updated Final Safety Analysis Report]. This change does not affect any initiators or precursors of an accident previously evaluated. This change will not increase the likelihood that a transient initiating event will occur because most transients are initiated by equipment malfunction and/or catastrophic system failure. Since the proposed change does not involve the introduction of new or redesigned plant equipment, these failure mechanisms are not impacted.

The consequences of accidents previously evaluated are not increased. The proposed change does not involve any equipment modifications which could adversely affect the expected accident sequence. Although the frequency of the MSSV surveillance testing is affected by the change, the frequency at which MSSV surveillances are performed is not assumed in any analyzed event. The changes in testing frequency are consistent with the ASME/ANSI Standard. The ASME/ANSI Standard has been applied extensively throughout the industry and demonstrated adequate by the resulting industry experience. Therefore, accident analyses assumptions reflected in the affected Surveillance Requirements will still be verified on a frequency sufficient to ensure that the assumptions are reliably maintained.

The role of these valves is in the mitigation of design basis accidents and transients. The effect of allowing the Zion station MSSV lift setpoint tolerance to increase from the currently required plus or minus 1 percent to the plus or minus 3 percent consistent with the ASME/ANSI Standard has been evaluated for all non-LOCA and LOCA design basis requirements. The plus or minus 3 percent tolerance for the MSSV setpoints was assumed in the VANTAGE5 Reload Transition Safety Report for the Zion Units 1 and 2. In all cases, either a reanalysis incorporating the increased MSSV setpoint tolerance continued to show results within acceptance limits, or the MSSV setpoints were determined not to affect the licensing basis results. Even though the plus or minus 3 percent tolerance has been shown to be acceptable, the proposed change conservatively requires the MSSV setpoints to be restored to within plus or minus 1 percent of the required value after testing. The remaining acceptance criteria of the IST program are at least as restrictive as existing Technical Specification requirements and ensure that an equivalent or greater degree of MSSV operational readiness is provided.

Additionally, the relocation of Surveillance details to the IST program and its implementing procedures will not increase the probability or consequences of a previously evaluated accident since adequate control of the requirements is provided by the 10 CFR 50.59 review process and ASME Section XI requirements incorporated by 10 CFR 50.55a(g). Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any previously analyzed?

The proposed change does not alter the design of the MSSVs or their function to protect against overpressure events. The proposed change does not introduce any new equipment, equipment modifications, or any new or different modes of plant operation. Therefore, the proposed change does not introduce any new failure modes and the plant will continue to be operated within acceptable limits. In addition, the proposed change still provides adequate assurance the MSSVs will be maintained operable.

For the reasons described above, there is no possibility that the proposed change creates a new or different kind of accident from any previously analyzed in the UFSAR.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change incorporates the industry standard testing requirements of Section XI of the ASME Code and applicable Addenda for the MSSVs. The Zion IST program requirements and implementing procedures have been developed in accordance with the ASME Section XI requirements to ensure component degradation is detected before the component is incapable of performing its intended safety function.

Although the frequency of the MSSV surveillance testing is affected by the change, the frequency at which MSSV surveillances are performed is not assumed in any analyzed event. The changes in testing frequency are consistent with the ASME/ANSI Standard. The ASME/ANSI Standard has been applied extensively throughout the industry and demonstrated adequate by the resulting industry experience. Any reduction in a margin of safety is insignificant since the extension of the surveillance intervals is justified based on accepted industry practice and compliance with ASME Section XI as mandated by 10 CFR 50.55(a)g. In addition, the proposed change has the potential to reduce testing that is typically done at power. Therefore, the proposed change reduces the risk of an unexpected plant transient that may be caused by online testing of the MSSVs.

The effect of allowing the Zion station MSSV lift setpoint tolerance to increase from the currently required plus or minus 1 percent to the plus or minus 3 percent consistent with the ASME/ANSI Standard has been evaluated for all non-LOCA and LOCA design basis requirements. The plus or

minus 3 percent tolerance for the MSSV setpoints was assumed in the VANTAGE5 Reload Transition Safety Report for the Zion Units 1 and 2. In all cases, either a reanalysis incorporating the increased MSSV setpoint tolerance continued to show results within the acceptance limits, or the MSSV setpoints were determined not to affect the licensing basis results. Although the plus or minus 3 percent tolerance has been shown to be acceptable, the proposed change conservatively requires the MSSV setpoints to be restored to within plus or minus 1 percent of the required value after testing. Therefore, modifying the applicable Technical Specification Surveillance Requirements for the MSSVs in accordance with the industry standards will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: October 27, 1993

Description of amendment request: The proposed amendment would relocate the requirements in Technical Specification (TS) 3/4.3.3.2 regarding incore detectors from the TSs to the Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change relocates incore detection system requirements from the Technical Specification (TS) to the Safety Analysis Report (SAR) consistent with the Nuclear Regulatory Commission (NRC) Policy Statement on Technical Specification Improvements. The ANO-2 [Arkansas Nuclear One, Unit 2] incore detection system is not required for plant safety since it does not initiate any direct safety-related function during anticipated operational occurrences or postulated accidents. The primary function of the incore detectors is to provide inputs to the Core Operating Limits Supervisory System (COLSS) for monitoring of core parameters. The COLSS is independent of the plant protection system. The CPCs [Core Protection Calculators] operate independently of COLSS, using the excore detectors to preserve plant safety parameters. The proposed change does not affect any material condition of the plant that could directly contribute to causing or mitigating the effects of an accident. The TS will continue to define the Limiting Conditions of Operation required to ensure that reactor core conditions during operations remain within the initial conditions assumed in the SAR. Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

Because the proposed change does not change the design, configuration, or method of operation of the plant, it does not create the possibility of a new or different kind of accident. The incore detection system is not a part of plant control instruments or engineered safety feature actuation circuits. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

This change does not decrease the margin of safety since the incore detection system is not required for plant safety. The system does not initiate any direct safety-related function during anticipated operational occurrences or postulated accidents. The proposed change relocates the incore detection system requirements from the TS to the SAR. Changes to the SAR are controlled under the criteria specified by 10CFR50.59. The proposed change will have no adverse impact on the plant protection system nor will any protective boundary or safety limit be affected. Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: October 27, 1993

Description of amendment request: The proposed amendment would relocate the requirement to verify the correct position of each electrical and/or mechanical position stop for the Emergency Core Cooling System throttle valves within 4 hours of each valve stroking operation or maintenance on the valve, to procedures that control the maintenance and operation of these valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change relocates the requirements concerning verification of correct position stop position [i.e, verification of the correct position of each position stop] following maintenance to licensee controlled documents, consistent with NUREG 1432 "Improved Standard Technical Specifications for Combustion Engineering Plants." The Operations and Maintenance procedures, which will contain these requirements, are controlled under the criteria set forth in 10CFR50.59. The position of the position stops will be verified following maintenance or adjustment of the ECCS [emergency core cooling system] throttle valves and periodically thereafter. The position stops will be verified at least every 18 months, as requiredby TS [Technical Specification] 4.5.2.g.2. The relocation of these position stop verification requirements is considered to be administrative in nature.

The ECCS throttle valves are not initiators of any accident previously evaluated. Therefore, the deletion of the requirement to verify the correct position of the position stops within 4 hours following completion of each valve stroking operation will not result in the increase in the probability of any accident previously evaluated. The ANO-2 [Arkansas Nuclear One, Unit 2] maintenance history reviewed for the eight ECCS throttle valves subject to the requirements of TS 4.5.2.g.1 has shown only four documented instances of failure of the open position to stop valve travel at the correct position since the beginning of 1985.

The deletion of the requirement to verify the correct position of the position stops following completion of each valve stroking operation will result in fewer challenges to the proper operation of the ECCS throttle valves. The probability of inducing a position stop failure due to valve stroking operations is considered to be highly unlikely. The process of position stop setting verification results in unnecessary additional challenges that could result in overall lower valve reliability. Therefore, position stop setting verification beyond that required for post-maintenance testing and periodically thereafter, as required by TS 4.5.2.g.2, is considered unwarranted. Since valve

reliability will not be decreased as a result of this change, there is no significant increase in the consequences of any accident previously analyzed.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

Because the proposed change does not change the design, configuration, or method of operation of the plant, it does not create the possibility of a new or different kind of accident. The proposed change does not allow the ECCS throttle valves to be operated in any new or different way from what is currently allowed.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed change relocates the requirements concerning verification of correct position stop position following maintenance to licensee controlled documents, consistent with NUREG 1432 "Improved Standard Technical Specifications for Combustion Engineering Plants." The Operations and Maintenance procedures, which will contain these requirements, are controlled under the criteria set forth in 10CFR50.59. The position of the position stops will be verified following maintenance or adjustment of the ECCS throttle valves and periodically thereafter. The position stops will be verified at least every 18 months, as required by TS 4.5.2.g.2. The relocation of these position stop verification requirements is considered to be administrative in nature and does not involve a significant reduction in the margin of safety.

The ANO-2 maintenance history reviewed for the eight ECCS throttle valves subject to the requirements of TS 4.5.2.g.1 has shown only four documented instances of failure of the open position stop to stop valve travel at the correct position since the beginning of 1985. The deletion of the requirement to verify the correct position of the position stops following completion of each valve stroking operation will result in fewer challenges to the proper operation of the ECCS throttle valves. The probability of inducing a position stop failure due to valve stroking operations is considered to be highly unlikely. The process of position stop setting verification results in unnecessary additional challenges that could result in overall lower valve reliability. Therefore, position stop setting verification beyond that required for post-maintenance testing and periodically thereafter, as required by TS 4.5.2.g.2, is considered unwarranted. Since valve reliability will not be decreased as a result of this change, there is no significant reduction in the margin of safety.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: October 22, 1993

Description of amendment request: The proposed changes would amend Technical Specifications (TSs) by modifying the testing frequencies for the drywell bypass test and airlock test, relocating certain drywell airlock tests from the TSs to administrative procedures, and incorporating various improvements from the Improved Standard Technical Specifications (NUREG-1434, Revision 0).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

I. The proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

1. The changes to Technical Specification 1.10 are purely administrative since the intent is to make the numbering consistent with the other proposed Technical Specifications. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The relocation of drywell leakage rate requirements of LCO [limiting condition for operation] 3.6.2.2 as a supporting surveillance for TS 3/4.6.2.1 (DRYWELL INTEGRITY) is only an administrative presentation change consistent with the guidance of NUREG-1434, Standard Technical Specifications, General Electric Plants, BWR/6 (Ref. 3). Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

3. The proposed change relocates certain details from the GGNS [Grand Gulf Nuclear Station] Technical Specifications (TS) to the TS Bases, UFSAR [updated final safety analysis report] or procedures. The TS Bases, UFSAR and procedures containing the relocated information will be maintained in accordance with 10 CFR 50.59 and are subject to the change control provisions in the Administrative controls section of Technical Specifications. Since any changes to the TS Bases, UFSAR or procedures will be evaluated per the requirements of 10 CFR 50.59, no increase (significant or insignificant) in the probability or consequences of an accident previously evaluated will be allowed. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

4. The proposed change relocates certain details from GGNS TS to the TS Bases, UFSAR or procedures. The TS Bases, UFSAR and procedures containing the relocated information will be maintained in accordance with 10 CFR 50.59 and are subject to the change control provisions in the Administrative Controls section of TS. Since any changes to the TS Bases, UFSAR or procedures will be evaluated per the requirements of 10 CFR 50.59, no increase (significant or insignificant) in the probability or consequences of an accident previously evaluated will be allowed. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

5. This change would delete the restriction which prevents use of the generic surveillance extension allowance for drywell bypass leakage testing. Drywell bypass leakage is not considered as the initiator for any previously evaluated accidents and, therefore, revising the surveillance frequency will not significantly increase the probability of any previously evaluated accident. Further, since the change maintains testing to verify the analyzed bypass leakage is not exceeded following an accident and does not result in any change in the response of the drywell to an accident, the change does not increase consequences of any accident previously evaluated.

6. The proposed change deletes an administrative requirement to obtain NRC staff review and approval of the test schedule for drywell bypass leakage tests, if one test fails to meet the specified limit. Test schedules are not used as the initiator of any accident. Therefore, the probability of any accident previously evaluated is not increased. This proposed deletion does not change the requirement for limiting drywell bypass leakage, only the requirement to receive NRC staff review and approval of a schedule for doing the test. Therefore, the consequences of previously evaluated accidents are not increased.

The proposed change in frequency for the drywell bypass leakage surveillance will continue to ensure that no paths exist through passive drywell boundary components to permit gross leakage from the drywell to the primary containment air space and result in bypassing the containment pressure-suppression feature beyond the design basis limit. The GGNS Mark III containment system satisfies General Design Criterion 16 of Appendix A to 10 CFR Part 50. Maximum drywell bypass leakage was determined previously by reviewing the full range of postulated primary system break sizes. The limiting case was a primary system small break LOCA and yielded a design

allowable drywell bypass leakage rate limit of 35,000 scfm [standard cubic foot/feet per minute]. The TS acceptable limit for the bypass leakage surveillance is 10% (i.e., 3,500 scfm) of this design basis value. The design basis drywell bypass leakage limit will not be affected by these proposed changes. Drywell integrity has been reliable at GGNS as indicated by past surveillances. The most recent bypass leakage value was approximately 1.8% of the design allowable leakage rate limit. GGNS is committed to maintaining programmatic and oversight controls that ensure that drywell bypass leakage remains a small fraction of the design allowable leakage limit. Therefore, the proposed changes do not significantly increase the consequences of an accident previously evaluated.

In order to analyze the impact of this proposal, the probability of excessive drywell bypass leakage is very conservatively assumed to be 1E-2 per year. A small LOCA initiator has a frequency of occurrence of 1E-3 per year in the GGNS IPE [individual plant examination]. The containment spray system was modeled in the GGNS IPE and has a failure probability to function on demand of approximately 1E-2 per year for a LOCA initiator given a core damage accident. The resultant frequency for an overpressure failure of containment due to excessive drywell leakage is conservatively estimated to be less than 1E-7 per year. This is a very low frequency event, and is on the order of the low frequency severe accident events considered in the GGNS IPE.

Since the resulting potential release would be much smaller than in a severe accident sequence of comparable frequency, it is clearly bounded by the GGNS IPE analysis results. This sequence would not increase overall plant risk. Therefore, the proposed changes do not have any significant risk impact to accidents previously evaluated.

In the unlikely event of a design basis accident, primary containment should maintain its integrity as designed since the margin of safety is not reduced. Secondary containment integrity, in conjunction with the standby gas treatment system (SGTS) with redundant 100% capacity trains, would also mitigate the consequences of a design basis accident. SGTS is an engineered safety feature and is described in GGNS UFSAR Section 6.5.3.

7. The proposed change would allow continued operation with an inoperable drywell airlock door interlock mechanism. Having both drywell airlock doors open at the same time is not an initiator of any previously analyzed accident. Therefore, this change does not significantly increase the frequency of such accidents. The proposed change provides actions with appropriate compensatory measures to maintain a level of safety equivalent to compliance with the LCO. These actions do not result in airlock function different than assumed in any accident. Therefore, this change does not significantly increase the consequences of any previously analyzed accident.

The proposed change would allow the temporary opening of the remaining OPERABLE door for the purpose of making repairs to a drywell airlock door and for a limited period of time for purposes other than making repairs. This change does not affect the airlock design or function, and failure of an airlock is not identified as the initiator of any event. Therefore, this proposed change does not involve an increase in the probability of an accident previously evaluated. The change to allow the temporary opening of the one OPERABLE door for the purpose of making repairs results in a potential increase in consequences should an accident occur while it is open, but this increase is minimized through administrative controls and offset by the avoided potential consequences of a transient during shutdown. The potential for increased consequences resulting from the combination of: (1) the frequency of experiencing an inoperable airlock door such that the temporary opening of the OPERABLE door is required for access to repair; (2) the brief period that the OPERABLE door would be opened for access (typically on the order of one minute per entry/exit); (3) the proximity of an individual to accomplish closure; and (4) the occurrence of an event of sufficient magnitude to cause an immediate containment pressure increase such that an airlock door could not be closed; is not considered to be significant. Additionally, providing the ability to eliminate the potential consequences of: (1) extended operation with only one OPERABLE door closed (not allowing repairs to be made to restore the second door to OPERABLE status); and (2) the transient of plant shutdown to follow (due to inability to perform the overall airlock test); further minimizes the consequences. The allowance is proposed have strict administrative control which will provide assurance that any associated potential consequences are minimized. Finally, the allowed time for both doors to be open is not expected to exceed the currently allowed time for required action when drywell integrity is determined to not be met. Therefore, these proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

This change would delete the restriction which prevents use of the generic surveillance extension allowance for drywell airlock leakage testing. Drywell airlock leakage is not considered as the initiator for any previously evaluated accidents and, therefore, revising the surveillance frequency will not significantly increase the probability of any previously evaluated accident. Further, since the change maintains testing to verify that the analyzed airlock leakage is not exceeded following an accident and the proposed change does not alter the response of the drywell to an accident, the change does not increase the consequences of any previously analyzed accident.

This change may increase the surveillance time interval of the drywell airlock leakage test. The current specification requires that it be conducted at each COLD SHUTDOWN if not conducted in the previous 6 months. If no shutdowns occur between refuelings, the time interval is the same as proposed. Therefore, there is no substantial change to the time interval. Further, there is no effect from a shutdown that would cause the airlock capabilities to be reduced. Therefore, this proposed change does not involve an increase in the probability of an accident previously evaluated. Further, since the change impacts only the frequency of verification and does not alter the response of the equipment to an accident, the change does not increase the consequences of any previously analyzed accident.

This change would increase the surveillance time interval of the drywell airlock door interlock so that it is not required to be performed unless the drywell airlock doors are to be opened for drywell entry. The proposed change does not affect the drywell airlock design or function. Additionally, a failure of an airlock is not identified as the initiator of any event. Therefore, this proposed change does not involve an increase in the probability of an accident previously evaluated. Further, since the change impacts only the frequency of verification and does not result in any change in the response of the equipment to and accident, the change does not increase the consequences of any previously analyzed accidents.

8. Calculations show that the maximum possible leakage possible with failed drywell airlock seals would not compromise the drywell safety function. The proposed change does not affect the drywell airlock design or function. Additionally, a failure of an airlock is not identified as the initiator of any event. The UFSAR containing the relocated information is maintained in accordance with 10 CFR 50.59 and is subject to the change control provisions in the Administrative Controls section of Technical Specifications. Since any changes to the UFSAR will be evaluated per the requirements of 10 CFR 50.59, no increase (significant or insignificant) in the probability or consequences of an accident previously evaluated will be allowed. Therefore, relocation of the airlock seal OPERABILITY requirements to the UFSAR does not involve a significant increase in the probability or consequences of an accident previously evaluated.

II. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

1. The proposed changes to Technical Specification 1.10 are purely administrative since the intent is to make the numbering consistent with the other proposed Technical Specifications. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

2. The proposed relocation of drywell leakage rate requirements of LCO 3.6.2.2 as a supporting surveillance for TS 3/4.6.2.1 (DRYWELL INTEGRITY) is only an administrative presentation change consistent with the guidance of NUREG-1434 (Ref. 3). Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed relocation of requirements does not involve a physical alteration of the plant (no new or different type of equipment will be installed) nor does it change the

methods governing normal plant operation. The proposed change will not impose or eliminate any requirements. Adequate control of the information will be maintained in the UFSAR. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

4. The proposed relocation of requirements does not involve a physical alteration of the plant (no new or different type of equipment will be installed) nor does it change the methods governing normal plant operation. The proposed change will not impose or eliminate any requirements. Adequate control of the information will be maintained in the UFSAR. Thus, the change proposed does not create the possibility of a new or different kind of accident from any accident previously evaluated.

5. The proposed deletion does not alter equipment design, equipment capabilities, or operation of the plant. Further, since the change impacts only the test frequency for verification of leaktightness and does not result in any change in the response of the equipment to an accident, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

6. The proposed change modifies the surveillance frequency for drywell bypass leakage and deletes an administrative requirement to get NRC staff review and approval of the test schedule. The change does not alter equipment design or capabilities. The changes do not present any new or additional failure mechanisms. The drywell is passive in nature and the surveillance will continue to verify that its integrity has not deteriorated. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

7. The proposed change does not alter equipment design or capabilities, but do allow operation of the plant with equipment that is incapable of performing its safety function. However, the change does include compensatory measures which will maintain a level of safety equivalent to the capabilities of the equipment. Drywell airlocks are designed and assumed to be used for entry and exit. Their operation does not interface with the reactor coolant system or any controls which could impact the reactor coolant pressure boundary or its support systems. The change impacts the test frequency for verification of airlock leaktightness and does not result in any change in the response of the equipment to an accident. Furthermore, brief periods of loss of drywell integrity are acknowledged in the existing license; TS 3.6.2.1 allows 1 hour to restore loss of drywell integrity prior to requiring a plant shutdown. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

8. The proposed relocation of requirements does not affect the drywell airlock design or function. Calculations show that the maximum leakage possible with failed drywell airlock seals would not compromise the drywell safety function. Additionally, failure of an airlock is not identified as the initiator of any event. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

III. The proposed change does not involve a significant reduction in a margin of safety.

1. The changes to Technical Specification 1.10 are purely administrative since the intent is to make the numbering consistent with the other proposed Technical Specifications. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

2. The relocation of drywell leakage rate requirements of LCO 3.6.2.2 as a supporting surveillance for TS 3/4.6.2.1 (DRYWELL INTEGRITY) is only an administrative presentation change consistent with the guidance of NUREG-1434 (Ref. 3). Therefore, this change does not involve a significant reduction in a margin of safety.

3. The relocation of requirements will not reduce a margin of safety because it has no impact on any safety analysis assumptions. In addition, the requirements to be transposed from the TS to the TS Bases, UFSAR or procedures are the same as the existing Technical Specifications. Since any future changes to these requirements in the TS Bases, UFSAR or procedures will be evaluated per the requirements of 10 CFR 50.59, no reduction (significant or insignificant) in a margin of safety will be allowed. Also, since the proposed change is consistent with NUREG-1434 (Ref. 3) as approved by the NRC Staff, revising the TS to reflect the approved level of detail ensures no significant reduction in the margin of safety.

4. The relocation of requirements will not reduce a margin of safety because it has no impact on any safety analysis assumptions. In addition, the requirements to be transposed from the TS to the TS Bases, UFSAR or procedures are the same as the existing Technical Specifications. Since any future changes to these requirements in the TS Bases, UFSAR or procedures will be evaluated per the requirements of 10 CFR 50.59, no reduction (significant or insignificant) in a margin of safety will be allowed. Also, since the proposed change is consistent with NUREG-1434 (Ref. 3) as approved by the NRC Staff, revising the TS to reflect the approved level of detail ensures no significant reduction in the margin of safety.

5. The proposed deletion impacts only the test frequency to be used for verification of the drywell bypass leakage. The limits on the allowable leakage are not revised and must continue to be met. Therefore, the change does not involve a significant reduction in the margin of safety.

6. The proposed change modifies the surveillance frequency for drywell bypass leakage and deletes an administrative requirement to get NRC staff review and approval of the test schedule. Reliability of drywell integrity is evidenced by the measured leakage rate during past drywell bypass leakage surveillances. Appropriate design basis assumptions will be upheld, even when combined with the complementary bypass leakage surveillances as proposed. The surveillance acceptance leakage rate is 10% of the design allowable drywell bypass leakage limit of 35,000 scfm. Margins of safety would not be reduced unless leakage rates exceeded the design allowable drywell bypass leakage limit. Therefore, the proposed change does not reduce the margin of safety.

7. This change permits the use of dedicated personnel to provide compensatory actions in place of automatic equipment for a limited time. These administrative controls continue to provide an adequate drywell boundary should an accident occur. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The design, function, and OPERABILITY requirements for the drywell airlock remains unchanged with this proposed revision. Drywell leak rate limits are unaffected. The proposed change to allow the temporary opening of the one OPERABLE door for the purpose of repairing an inoperable airlock door and for purposes other than repairing an inoperable airlock door (for a limited time), is not considered to be a significant reduction in the margin of safety. The combination of: (1) the frequency of experiencing an inoperable airlock door such that drywell entry is required for access to repair; (2) the brief period the OPERABLE door would be opened for access (typically on the order of one minute per entry/exit); (3) the proximity of a dedicated individual to accomplish closure; and (4) the occurrence of an event of sufficient magnitude to cause an immediate containment pressure increase such that an airlock door could not be closed; are not considered to be representative of a significant reduction in the margin of safety. Additionally, providing the ability to eliminate any reduction in safety resulting from the combination of: (1) extended operation with only one OPERABLE door closed (not allowing repairs to be made to restore the second door to OPERABLE status); and (2) the transient of plant shutdown to follow (due to inability to perform the overall airlock test); further minimizes any reduction in the margin of safety. The allowance is proposed have strict administrative control which will provide assurance that any associated safety reduction is further minimized. Finally, the allowed time for both airlock doors to be open is not expected to exceed the currently allowed time for required action when drywell integrity is determined to not be met. Therefore, the proposed changes do not reduce the margin of safety.

The proposed change affecting frequency of testing impacts only the verification of drywell airlock leakage. The limits on the allowable leakage are not revised and must continue to be met. The changes in testing frequency will not reduce the reliability of the drywell airlock hardware. The surveillances will continue to provide sufficient assurance of OPERABILITY. Therefore, the proposed changes do not reduce the margin of safety.

8. The proposed change does not adversely affect design or performance of the drywell or primary containment safety functions.

Drywell integrity will continue to be surveilled by means of the proposed periodic drywell bypass leakage test, performance of the drywell airlock door latching and interlock mechanism surveillance, and performance of additional surveillances including drywell isolation valves. The combination of these surveillances will provide adequate assurance that drywell bypass leakage will not exceed the design basis limit. Evaluation of bypass leakage values for complete failure of the drywell airlock door seals determined that the drywell airlock door seals are not required to maintain the design basis assumption for limited drywell bypass leakage. Therefore, the proposed change does not reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: November 4, 1993

Description of amendment request: The proposed amendment would modify Technical Specification 3/4.8.1.1, "AC Sources-Operating," by removing Surveillance Requirement 4.8.1.1.2.e.1 from the technical specifications and relocating it to plant controlled programs. This surveillance requirement subjects each diesel generator to an inspection in accordance with the manufacturer's recommendations. The proposed action is consistent with the improved Standard Technical Specifications for BWR/6 facilities (NUREG-1434).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed change is consistent with the improved Standard Technical Specification (NUREG-1434) and does not result in any changes to the existing plant design. The diesel generators will continue to be inspected in accordance with the manufacturer's recommendations as part of the Clinton Power Station preventive maintenance program. Since the change does not impact the ability of the diesel generators and the AC electrical power sources to perform their function, this change does not result in a significant increase in the consequences of any accident previously evaluated. The diesel generators will continue to function as designed and will continue to be tested as previously tested. Therefore, the proposed change will not impact the probability of occurrence of any accident previously evaluated.

(2) This request does not result in any change to the plant design nor does it involve a significant change in current plant operation. The diesel generators will continue to be inspected as recommended by the manufacturer and the remaining surveillance requirements will not be changed. The change merely permits taking credit for current preventive maintenance activities without specifically requiring the inspection activity in the Technical Specifications. As a result, no new failure modes will be introduced, and the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed request does not adversely impact the reliability of the diesel generators. As stated above, the manufacturer's recommended inspections will continue to be performed. In addition, the diesel generators will continue to perform their design functions. This request does not involve an adverse impact on diesel generator operation or reliability. Since the diesel generator function is not affected by the proposed change, this request does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: James E. Dyer

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: November 4, 1993

Description of amendment request: The proposed amendment would modify Technical Specification 3/4.8.2.1, "DC Sources-Operating," by deleting the requirement that the plant be shut down to perform the required battery capacity or service testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed change allows removal of the Division III or IV battery from service for testing during plant operation. Because of a two-hour requirement for restoration, it is not expected that Division I or II batteries would be removed from service during plant operation. Removal of any DC subsystem from service does not render any other subsystem inoperable. Clinton Power Station Updated Safety Analysis Report Section 8.3.2 states that the system design allows for the single failure or loss of any redundant DC subsystem during simultaneous accident and loss of offsite power conditions without adversely affecting safe shutdown of the plant. Since all required functions for safe shut down of the facility in response to an accident can be performed by the Division I and II DC subsystems, permitting the Division III or IV 125 VDC subsystem to be out of service during plant operation would not result in an increase in the consequences of any accidents previously evaluated. Loss of the DC Electrical Distribution System is not itself an initiator of any previously evaluated accident. The proposed change would therefore have no impact on the probability of occurrence of an accident previously analyzed.

(2) This request does not result in any change to the plant design nor does it involve a change in current plant operation. The proposed change would have no effect on the way the battery capacity test is performed. Maintenance on the Division III or IV battery would increase reliability of the affected battery, and post-modification testing would ensure the battery is operable in accordance with the vendor recommendations prior to being returned to service. As a result, no new failure modes would be introduced, and the proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed request does not adversely impact the reliability of the DC Electrical Distribution System. The remaining three divisions of DC power would continue to perform the system's design function while the Division III or IV battery is inoperable for testing. Further, the Technical Specifications permit the Division III and/or IV batteries, as well as the High Pressure Core Spray system itself, to be inoperable for limited periods of time during reactor operation. Since the proposed change would not adversely impact system operation or reliability, and since the DC Electrical Distribution System function would not be adversely affected by the proposed change, this request does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: James E. Dyer

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: November 3, 1993

Description of amendment request: The proposed amendment would modify License Condition 2.C.(4) and delete Technical Specification (TS) 3/4.3.8, "Turbine Overspeed Protection System." License Condition 2.C.(4) required the licensee to submit for NRC approval a turbine system maintenance program based on the manufacturer's calculations of missile generation probabilities. The proposed change to License Condition 2.C.(4) would indicate that this requirement has been satisfied. The deletion of TS 3/4.3.8 would provide the licensee with the flexibility to implement the manufacturer's recommendations for turbine steam valve surveillance test requirements. The turbine steam valve surveillance test requirements based on manufacturer's recommendations would be contained in the Updated Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

With the approval of this Amendment, preventative maintenance, testing, and inspections of the Turbine Overspeed Protection System will remain governed by an approved turbine system maintenance program, described in the USAR [Updated Safety Analysis Report]. To maintain turbine system reliability, controlled procedures are in place implementing manufacturer's recommendations. In evaluating the turbine system maintenance program (NRC approved by letter dated March 15, 1990 which satisfied License Condition 2.C.(4)) the Staff found the overall probability of generating a turbine missile at Nine Mile Point Unit 2 to be less than one in ten thousand (<1E-4) events per year. This probability, when combined with a 1E-3 probability (NUREG 1048, Supplement 6, Appendix U) for missile impact and essential system damage, yields an overall probability of less than one in ten million (<1E-7) events per year. Less than one in ten million (<1E-7) events per year is an acceptably low probability according to the criteria of NUREG 0800 and agrees with the initial staff finding in NUREG 1048. Consequently, the probability of a previously evaluated turbine missile accident will not increase.

The purpose of the Turbine Overspeed Protection System is prevention of an overspeed event, the precursor to a potential turbine fragment missile. Since the purpose of this system is preventative, it serves no function to mitigate any accident previously evaluated and thus does not affect the consequences of any analyzed accident.

Updating License Condition 2.C.(4) is administrative in nature and does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Accordingly, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Accidents which include rapid Turbine Stop Valve closure as a response to some initiating event are not relevant to this discussion since in those instances the valves respond as designed.

The relevant accident resulting from a failure of the Turbine Overspeed Protection System is a turbine fragment missile as evaluated in Section 3.5.1.3 of the Nine Mile Point Unit 2 Updated Safety Analysis Report. Approval of this amendment would not change the operational characteristics of surveillance tests and would impose no new testing requirements, but rather relocate testing requirements from Technical Specifications to the USAR. Updating License Condition 2.C.(4) is administrative in nature and does not alter intent of any requirements. Therefore, approval of this amendment to delete Specification 3/4.3.8 and to update the License Condition 2.C.(4) signifying NRC approval would not create the possibility of a new or different kind of accident from the turbine missile accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

With the approval of this Amendment, Niagara Mohawk remains committed to the manufacturer's turbine reliability program. This turbine reliability program calculates the same maximum permissible probability for generation of a turbine missile as previously evaluated. This turbine missile generation probability, when combined with a favorable turbine orientation, results in the same, acceptably low, overall probability of turbine missile damage to essential systems and does not involve a reduction in the margin of safety.

Further, the approval of this Amendment will allow Niagara Mohawk to optimize the performance of testing and inspections in accordance with the manufacturer's recommendations and operational experience. Implementing the manufacturer's recommendations may lead to a reduced frequency of certain steam valve surveillance tests and a corresponding reduced probability of challenges to plant equipment and personnel, thereby enhancing the margin of safety. Updating License Condition 2.C.(4) is administrative in nature and does not alter intent of any requirements.

The deletion of Technical Specification 3/4.3.8 and associated bases and an update signifying satisfaction of the License Condition 2.C.(4) will not, therefore, decrease the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: October 15, 1993

Description of amendment request: The proposed changes to Tables 3.8-1 and 3.8-2 would provide a maximum duration for which the radioactive effluent monitoring instrumentation may be out-of-service for the purpose of maintenance, performance of required tests, checks, calibrations, or sampling before the applicable action statement is entered. Additionally, (1) "sampling" is proposed to be added to the applicability statements within Tables 3.8-1 and 3.8-2 as an additional reason for the radioactive effluent monitoring instrumentation to be out-of-service and (2) the sentence "Auxiliary sampling must be initiated within 12 hours of initiation of this action statement" is proposed to be added to Action Statement D for Table 3.8-2.

Basis for proposed no significant hazards consideration determination. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO [Northeast Nuclear Energy Company] has reviewed the proposed changes in accordance with 10CFR50.92 and has concluded that they do not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

These changes address the operability requirements for radioactive effluent monitoring instrumentation outlined in Tables 3 8-1 and 3.8-2, and Action Statement D associated with Table 3.8-2 on page 3/4 8-8. The addition of a 12-hour channel inoperability time limit to the applicability statements within Tables 3.8-1 and 3.8-2 provides a specific duration for which radioactive effluent monitoring instrumentation may be out-of-service for the purpose of maintenance and performance of required tests, checks, calibrations, and sampling without entering the associated action statement. The 12-hour time limit was deemed appropriate based on previous historical performance of the maintenance on this instrumentation. The inclusion of sampling to the activities which may be performed during instrument service interruption is necessary to more accurately reflect routine work currently performed on these instruments. The addition of the sentence, "Auxiliary sampling must be initiated within 12 hours of initiation of the action statement" on page 3/4 8-8 provides specific guidance for periods of instrument inoperability beyond that specified in the applicability statements for iodine and particulate samplers. Auxiliary sampling for the Iodine and Particulate Monitoring Instrumentation requires setup of temporary monitoring equipment. As such, the 12-hour time allotment is appropriate for this action statement.

These changes provide clarification of the actions to be taken during instrument inoperability. The radioactive effluent monitoring instrumentation is passive and therefore does not affect design basis accident scenarios. These changes do not involve any alterations to plant equipment or procedures which would affect any operational modes or accident precursors. Therefore, the changes have no effect on the probability of occurrence of previously evaluated accidents, and have no effect on the consequences of previously evaluated accidents.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The changes described above do not involve physical modifications to the radioactive effluent monitoring instrumentation and, therefore, do not affect plant or operator response to an accident. The changes clarify operability requirements associated with this instrumentation, which is passive and, therefore, cannot initiate or mitigate any type of accident. The instrumentation serves to provide radiological information to the plant operator. As such, the proposed changes have no impact on design basis accidents, and the changes will not modify plant response or create a new or unanalyzed event. No new failure modes are introduced.

3. Involve a significant reduction in the margin of safety.

These changes provide specific operability requirements for radioactive effluent monitoring instrumentation and do not have any impact on the protective boundaries and, therefore, have no impact on the safety limits for these boundaries. The instrumentation associated with these changes does not provide a safety function and only serves to provide radiological information to plant operators. The instrumentation has no affect on the operation of any safety-related equipment. No hardware, software, or setpoint changes are involved in this wording change. These changes provide more definitive operability and surveillance requirements for radioactive effluent monitoring instruments. As such, these changes have no impact on the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: October 5, 1993

Description of amendment request: The amendment would revise the Plant Operating Review Committee (PORC) review, the Nuclear Review Board review, Radiological Environmental Monitoring Program requirements, position titles, and the organization chart in Appendix B consistent with Appendix A.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because they do not affect operation, equipment, or a safety related activity and are hence administrative in nature. Thus, these administrative changes cannot affect the probability or consequences of any accident.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated because these changes are purely administrative and do not affect the plant. Therefore, these changes cannot create the possibility of any accident.

3. The proposed changes do not involve a significant reduction in a margin of safety because the changes do not affect any safety related activity or equipment. These change are purely administrative in nature and do not affect the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Larry E. Nicholson, Acting

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments. October 27, 1993

Description of amendment request: The licensee proposes to change the Technical Specifications to 1) require the Senior Manager-Operations to hold a Senior Reactor Operator (SRO) license; and 2) delete the requirement for the a) Plant Manager or Superintendent-Operations, b) the Assistant Superintendent-Operations, and c) the Superintendent-Technical or the Engineer-Systems to hold an SRO license.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration, which is presented below:

1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of occurrence of an accident is based in part on the training and qualification requirements applicable to the personnel filling key plant management positions. Accordingly, the qualifications and scope of responsibilities applicable to plant management positions relative to the guidance in ANSI N18.1-1971, as described in Updated Final Safety Analysis Report (UFSAR) Section 13.2, "Organizational Structure," were originally reviewed and approved by the NRC during the initial plant licensing. Specifically, UFSAR Section 13.2.3, "Qualifications of Nuclear Plant Personnel," details the following correlation between plant management positions and the criteria in ANSI N18.1-1971:

[. . . See licensee's table in application]

Section 4.2.1, 'Plant Managers,' of ANSI N18.1-1971 states in part that '... The plant manager shall have acquired the experience and training normally required for examination by the AEC for a Senior Reactor Operator's License...' unless the plant organization includes one or more persons who are designated as principal alternates for the plant manager and who meet the nuclear power plant experience and training requirements established for the plant manager. The Plant Manager can conform to the criterion of ANSI N18.1-1971 Section 4.2.1 without holding an SRO License by acquiring nuclear plant experience and training. The Senior Manager-Operations is designated as a principal alternate to the Plant Manager. ANSI N18.1-1971, Section 4.2.2, 'Operations Manager,' states in part that at the time of '...appointment to the active position...the operations manager shall hold a Senior Reactor Operator's License.' Requiring the Senior Manager-Operations to hold an SRO License will continue to ensure conformance with this criterion. ANSI N18.1-1971, Section 4.3.2, 'Supervisors Not Requiring AEC Licenses,' does not include any recommendation that these managers have the training to be eligible for, or hold, an SRO license. ANSI N18.1-1971, Section 4.2.4, 'Technical Manager,' does not include any recommendation that the Technical Manager have the training to be eligible for, or hold, an SRO License.

The proposed TS change would continue to require that the individual responsible for the management of plant operations as well as day-to-day operating activities and conformance to the operating license, TS, and operating procedures demonstrate detailed operating knowledge and successfully complete training required to obtain and hold an SRO License, while deleting the unnecessary requirement that the Plant Manager or the Assistant Superintendent-Operations or the Superintendent-Technical or the Engineer Systems hold an SRO License. Also, licensed plant shift operators will continue to report to a management position filled by an individual who holds an SRO License.

Operations management and Technical management personnel would continue to maintain cognizance of pertinent plant, procedure, and TS changes by virtue of the responsibilities of their plant management positions, TS required PORC membership, and roles in the Emergency Response Organization. These responsibilities include review and or approval of proposed new or revised operating procedures and oversight of LOR training. Therefore, the qualifications of the Operations and Technical Management personnel will remain at the currently required level. Furthermore, these key plant management individuals who will no longer [be] required to hold an SRO License will be able to devote the time now spent in LOR training to increase their overview and involvement in plant operation and planning activities. Accordingly, the probability of occurrence of an accident previously evaluated in the Safety Analysis Report (SAR) that was based on the training and qualification of key plant management personnel is not increased by the proposed change to the current SRO License requirements.

The consequences of an accident previously evaluated in the SAR could be affected by the qualification of plant management personnel to which the plant operators report via the chain of command. As explained above, the proposed TS change to require the manager in the licensed operator chain of command to hold an SRO License will continue to meet the guidance provided by the applicable criteria in ANSI N18.1-1971.

This proposed change does not involve any changes to plant SSC, or in the manner in which plant SSC [structures, systems or components] are operated, maintained, modified, tested, or inspected. Therefore, the proposed TS change does not increase the consequences of accidents previously evaluated in the SAR.

Accordingly, as explained above, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2) The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

This proposed change involving the qualification (e.g., obtain and hold [an] SRO License) of key plant management personnel cannot create the possibility of a new or different type of accident than previously evaluated in the SAR because no substantive change to the current requirements is involved as discussed above. Also, because the proposed TS change does not involve physical changes to plant SSC, the possibility of creating a different type of accident than previously evaluated in the SAR cannot be created. Therefore, the possibility of a different type of accident than previously evaluated in the SAR is not created.

3) The proposed changes do not involve a significant reduction in a margin of safety.

The margin of safety of overall plant operating activities is based in part on the TS requirements that personnel serving in key plant management positions satisfy qualification criteria specified in ANSI N18.1-1971. The proposed change to the TS does not reduce these established qualifications that key plant management personnel must currently satisfy. In addition, implementation of the proposed TS changes will allow the affected plant management individuals to use the time now spent in LOR training (i.e., approximately one week out of every six week period throughout the year) to increase their involvement in plant operational matters and planning activities. Therefore, the proposed TS change does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Larry E. Nicholson, Acting

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: October 27, 1993

Description of amendment request: The licensee proposes to amend the Technical Specifications (TS) to allow one of the required on-shift Senior Reactor Operator (SRO) positions to be combined with the required Shift Technical Advisor (STA) position (i.e., dual-role SRO/STA position). The proposed change will permit the licensee to continue to satisfy the NRC policy for engineering expertise on shift, using either of the options discussed in Generic Letter 86-04, "Policy Statement on Engineering Expertise on Shift," dated February 13, 1986.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously

evaluated because implementation of the proposed changes will not involve any physical changes to plant SSC [systems, structures or components] or the manner in which these SSC are operated, maintained, modified, tested, or inspected. Therefore, the proposed use of the dual-role SRO/STA position does not increase the probability of an accident previously evaluated.

The consequences of an accident previously evaluated could be affected by the performance of the individual filling the dual-role SRO/STA position. However, implementation of the proposed change will result in personnel with enhanced operational knowledge being assigned to perform the STA function of providing accident assessment expertise and analyzing and responding to off normal occurrences when needed. The NRC's stated preference in the October 28, 1985, "Policy Statement on Engineering Expertise on Shift," indicates that the NRC has concluded that the individual filling the dual-role SRO/STA position may perform these functions better than a non-licensed individual filling the STA position even when the SRO/STA is concurrently functioning as one of the required shift SROs. Furthermore, implementation of the proposed changes will not affect the staffing or qualification of the fire brigade members. Therefore, the proposed TS changes do not increase the consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because implementation of the proposed TS changes will not involve physical changes to plant SSC, or the addition of new SSC. Furthermore, implementation of the proposed changes will not adversely affect the manner in which plant SSC are operated, maintained, modified, tested, or inspected. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. The proposed changes do not involve a significant reduction in a margin of safety because the STA and fire brigade leader positions will be filled by appropriately qualified personnel and shift staffing required by TS Table 6.2.1 and 10CFR50.54(m)(2) is maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Larry E. Nicholson, Acting

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: November 1, 1993

Description of amendment request: The proposed changes concern the Radiation Monitoring Systems - Isolation and Initiation Functions section of the Technical Specifications (TS) and are necessary to support a plant modification (Mod. 5281). The modification updates the obsolete control room ventilation radiation monitoring equipment and replaces it with a microprocessor based in-duct system.

The proposed administrative change to the Seismic Monitoring Instrumentation section of the TS revises page 240v (Table 4.15), to change the title of Item 3 from "Triaxial response-Spectrum Recorders," to "Central Recording and Analysis System." This will then be consistent with Item 3 of page 240u.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Control Room Ventilation Intake Radiation Monitoring System does not serve as an initiator or contributor to any accidents previously evaluated. The system provides indication and detection of radioactivity in the control room ventilation intake and initiates the appropriate trip logic to start the Control Room Emergency Ventilation (CREV) system. This modification increases the number of radiation monitors and reduces the overall complexity of the Control Room Ventilation Intake Radiation Monitoring System. The logic to initiate CREV is revised from one out of two to one out of two twice, to reduce the number of spurious initiations of CREV.

The proposed seismic monitoring changes are purely administrative and will correct an omission from a previously approved TSCR.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed Control Room Ventilation Intake Radiation Monitoring System changes support modification 5281 which upgrades the Control Room Ventilation Intake Radiation Monitoring System. The modification replaces the obsolete Control Room Ventilation Intake Radiation Monitoring System equipment with state-of-the-art equipment. All radiation detectors and monitoring components shall have equal or better performance specifications and qualification requirements than the existing components. The new equipment to be installed under modification 5281 does not introduce any new failure modes as compared to the existing equipment.

The proposed seismic monitoring changes are purely administrative and will correct an omission from a previously approved TSCR.

Based on the above, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The current PBAPS Technical Specifications require a minimum of one (1) detector for indication and alarm of radioactive air being drawn into the Control Room be operable. The associated Bases also state that "control room intake air filtration is initiated when a trip signal from the detectors is given." Currently, CREV is initiated via high radiation signals from either detector (using a one out of two logic) or failure signals from both detectors or failure of one detector and low flow in the other detector sample line or low flow in both detector sample lines.

With the new system, CREV will be initiated on 1) high radiation (using a one out of two twice logic), 2) low flow in the control ventilation duct, 3) loss of power in one division at the local radiation monitoring system (RMS) panel, or 4) downscale/failure of the RIS (using a one out of two twice logic). High radiation, low flow in the ventilation duct, loss of power or downscale/failure of an RIS will be annunciated in the control room.

The proposed seismic monitoring changes are purely administrative and will correct an omission from a previously approved TSCR.

Based on the above, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Larry E. Nicholson, Acting

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: October 29, 1993

Description of amendment request: The licensee has requested an amendment to the Technical Specifications (TS) to revise Section 3.10 (Control Rods and Power Distribution Limits) to correct an administrative error that resulted from the issuance of TS

Amendment No. 103. Specifically,

Amendment No. 103, which was issued on September 11, 1990, relocated Figures 3.10-2 (Hot Channel Factor Normalized Operating Envelope) and 3.10-4 (Control Rod Insertion Limits) from the TS to the Core Operating Limit Report (COLR). However, these figures and references to them were not removed from TS. The licensee's amendment request will correct this administrative error and further clarify the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of any accident previously evaluated?

Response:

The proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated. The proposed changes are administrative in nature -- aiming to provide clarity on the status of technical specification figures. The changes do not affect plant system operations, functions, or procedures.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response:

The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated since they are administrative in nature. The changes do not introduce new systems, equipment or procedures.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The proposed changes do not involve significant reductions in margins of safety The changes are administrative in nature -- clarifying the status of technical specification figures. The changes do not affect system operations, functions, procedures or setpoints.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: October 18, 1993

Description of amendment request: The proposed amendment extends the surveillance test intervals (STI's) and allowed out-of-service times (AOTs) for selected instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

To justify the STI and AOT relaxation for the selected instrumentation mentioned above, GENE-770-06-1-A [Reference 1) [see October 18, 1993, application] demonstrates the similarity in components, configuration, and function with previously reviewed instrumentation for which STI and AOT relaxations were approved. The analysis for the previously approved STI and AOT relaxation approvals are in NEDC-30851P-A, NEDC-31677P-A (References 3 and 4, respectively) [see October 18, 1993, application]. When all contributing factors are considered, the net impact of the proposed changes is to improve plant safety. These generic analyses have been verified to be applicable to the [Hope Creek Generating Station] HCGS as indicated in Section III above. [See October 18, 1993, application.] Since the proposed changes have a net beneficial impact on plant safety when all factors are considered, the proposed changes will not significantly increase the probability or consequences of a previously analyzed accident.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Increasing the AOTs and STIs for the selected instrumentation does not alter the function of the equipment nor involve any type of plant modification. Additionally, no new modes of plant operation are involved with these changes. The proposed changes therefore will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will not involve a significant reduction in a margin of safety.

As requested by the BWR Owners' Group, GE performed analyses to evaluate the effect of the proposed changes on plant safety. The NRC staff has reviewed and approved the generic studies contained in GE LTRs [Licensing Topical Reports] NEDC-30851P-A, NEDC-31677P-A, and GENE-770-06-1-A and has concurred with the BWR Owners Group that the proposed changes do not significantly affect the plant safety. Furthermore, the overall level of plant safety will be improved by the proposed changes. It can therefore be concluded that the proposed changes will not significantly reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Larry E. Nicholson, Acting

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: October 18, 1993

Description of amendment request: The proposed amendment extends the surveillance test intervals (STIs) and allowed out-of-service times (AOTs) for the isolation actuation instrumentation at the Hope Creek Generating Station.

Basis for proposed no significant hazards consideration determination. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the isolation actuation instrumentation were judged to potentially affect plant safety through their impact on the isolation failure frequency (IFF). The generic analyses contained in Licensing Topical Report (LTR) NEDC-30851P-A, Supplement 2 and LTR NEDC-

31677P-A assessed the impact of changing the isolation actuation instrumentation surveillance test intervals (STIs) and allowed out-of-service times (AOTs) on the IFF. The analyses contained in these LTRs demonstrate that the proposed changes have a negligible effect on the IFF, and when all contributing factors are considered, the net impact of the proposed changes is to improve plant safety. These generic analyses have been verified to be applicable to the HCGS [Hope Creek Generating Station] as indicated in Section III above. [See October 18, 1993, application]. Since the proposed changes do not significantly affect the IFF and have a beneficial impact on plant safety when all factors are considered, the proposed changes will not significantly increase the probability or consequences of a previously analyzed accident.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Increasing the AOTs and STIs for the isolation actuation instrumentation does not alter the function of the equipment performing the isolation functions nor involve any type of plant modification. Additionally, no new modes of plant operation are involved with these changes. The proposed changes therefore will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will not involve a significant reduction in a margin of safety.

The proposed changes to the isolation actuation instrumentation were judged to potentially affect plant safety through their impact on the IFF. As requested by the BWR Owners' Group, GE performed analyses to evaluate the effect of the proposed changes on the IFF. The NRC staff has reviewed and approved the generic study contained in LTRs NEDC-30851P-A, Supplement 2 and NEDC-31677P-A and has concurred with the BWR Owners Group that the proposed changes do not significantly affect the IFF. Furthermore, the overall level of plant safety will be improved by the proposed changes. It can therefore be concluded that the proposed changes will not significantly reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Larry E. Nicholson, Acting

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of amendment request: September 30, 1993 (TS 345)

Description of amendment request: The proposed amendment would delete conditions from the Browns Ferry Units 1, 2, and 3 licenses which require maintenance of positive access controls for the containment in accordance with 10 CFR 73.55(d)(8), and deletes a redundant condition from the Unit 3 license.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed administrative change to the operating licenses does not involve any physical alterations of plant configuration, changes to setpoints, or changes to any operating parameters. The proposed change does not increase the frequency of the precursors to design basis events or operational transients analyzed in the Browns Ferry Final Safety Analysis Report. The change does not alter the designation of BFN [Browns Ferry Nuclear Plant] containment as a vital area, or alter the NRC-approved measures set forth in the BFN Physical Security Plan pertaining to the requirements of 10 CFR 73.55(d)(8). Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed administrative change to the operating licenses does not change any security requirements currently in place at BFN. The proposed change does not alter the requirement to comply with 10 CFR 73.55(d)(8). The change only deletes a duplicative license condition and removes a statement which is no longer necessary to ensure compliance with the requirements of 10 CFR 73.55(d)(8). Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed administrative change to the operating licenses does not change or reduce the effectiveness of any security/safeguards measures currently in place at BFN. The proposed change would not remove the requirement to comply with 10 CFR 73.55(d)(8). Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 27, 1993

Description of amendment request: The proposed amendment adds a footnote to Technical Specification 4.6.1.2.a to allow a one time extension of the test interval for the Type A overall integrated containment leakage rate surveillance. The extension would allow the third Type A test of the first 10-year service period to be delayed until the eighth refueling outage but no later than March 31, 1996. The extension would allow the third test to be performed approximately 54 months after the second test instead of the currently allowed maximum period of 50 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This exemption applies to the ILRT [integrated leak rate testing] and does not affect the local leak rate testing of containment penetrations and isolation valves where the majority of the leakage occurs. The allowable containment leakage used in the accident analysis for offsite doses, L_a, is 0.2 wt.%/day and for conservatism the leakage is limited to 75% L_a to account for the possible degradation of containment leakage barriers between tests. Based on the "as-left" leakage data for the past two ILRTs, the additional time period added to the testing interval would not adversely impact the containment leakage barriers to where degradation would cause leakage to exceed that assumed in the accident analysis.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

There are no design changes being made that would create a new type of accident or malfunction and the method and manner of plant operation remain unchanged. The change to the Surveillance Requirement is a one time exemption to extend the surveillance interval for performance of the third ILRT.

3. The proposed change does not involve a significant reduction in the margin of safety.

There are no changes being made to the safety limits or safety system settings that would adversely impact plant safety. The change is a one time exemption to extend the time interval for performing a ILRT approximately 4 months beyond the current maximum interval. This change does not reduce any technical specification margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D. C. 20037

NRC Project Director: Suzanne C. Black

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Northeast Nuclear Energy Company, Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: November 4, 1993, as supplemented November 4, 1993.

Description of amendment request: The proposed amendment would increase the required supplementary leak collection and release system (SLCRS) drawdown time from 60 seconds to 120 seconds and increase the required vacuum to 0.4 inches, based on compensating reductions in containment leak rate. Date of publication of individual notice in Federal Register: November 12, 1993 (58 FR 60072)

Expiration date of individual notice: December 13, 1993

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the Federal Register as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

Arizona Public Service Company, et al., Docket No. 50-528, Palo Verde Nuclear Generating Station, Unit 1, Maricopa County, Arizona

Date of application for amendment: September 8, 1993

Brief description of amendment: The amendment adds a methodology supplement entitled, "System 80™ Inlet Flow Distribution," to the list of methods used to determine the core operating limits.

Date of issuance: November 19, 1993

Effective date: November 19, 1993

Amendment No.: 72

Facility Operating License No. NPF-41: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 15, 1993 (58 FR 53585)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 19, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois

Date of application for amendments: April 27, 1993

Brief description of amendments: The amendments revise the reactor protection and engineered safeguards and limiting safety system settings of the Technical Specifications by: (1) adding steam generator overfill protection requirements, and (2) modifying the equations for the overpower delta T (OPDT) and overtemperature delta T (OTDT) protective functions.

Date of issuance: November 15, 1993

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 150 and 138

Facility Operating License Nos. DPR-39 and DPR-48. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 13, 1993 (58 FR 52981)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 15, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut; and Northeast Nuclear Energy Company, Docket Nos. 50-245, 50-336, and 50-423, Millstone Nuclear Power Station, Units 1, 2, and 3, New London County, Connecticut

Date of application for amendments: July 16, 1993

Brief description of amendments: The amendments revise the Technical Specifications to change the submittal frequency of the Radioactive Effluent Release Report from semiannual to annual to be submitted by May 1 of each year, and also, consolidates the Radioactive Effluent Release Report and the Radioactive Effluents Dose Report into a single annual report entitled Radioactive Effluent Report.

Date of issuance: November 23, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 170, 69, 169, and 86

Facility Operating License Nos. DPR-61, DPR-21, DPR-65, and NPF-49. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 1, 1993 (58 FR 46226)

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 23, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457 for the Haddam Neck Plant; and the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360 for Millstone Units 1, 2, and 3.

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of application for amendment: August 6, 1993

Brief description of amendment: The amendment changes the Technical Specifications to implement a reorganization of the Big Rock Point staff.

Date of issuance: November 15, 1993

Effective date: November 15, 1993

Amendment No.: 112

Facility Operating License No. DPR-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 13, 1993 (58 FR 52983).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 15, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 5, 1993

Brief description of amendment: The amendment revised the Technical Specifications for the Containment Spray System to clarify the requirements for Applicability in Mode 4 and to increase the testing interval for verifying that each containment spray nozzle is unobstructed.

Date of issuance: November 17, 1993

Effective date: November 17, 1993

Amendment No.: 89

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 15, 1993 (58 FR 48383)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 17, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: September 7, 1993, as supplemented September 24, 1993

Brief description of amendment: The amendment revised Technical Specifications for the incore detection system to allow less than 75% but more than 50% of the incore locations to be operable provided the appropriate penalties are applied to the core operating limit supervisory system (COLSS) and the core protection calculators (CPCs). This change is effective for the remainder of the current Fuel Cycle 6.

Date of issuance: November 18, 1993

Effective date: November 18, 1993

Amendment No.: 90

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 13, 1993 (58 FR 52984)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 18, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 21, 1992

Brief description of amendment: The amendment revised the Technical Specifications on component cooling water (CCW) radiation monitors to clearly distinguish between the monitors and to remove the requirement for monitor A/B during Modes 5 and 6 where operation is difficult due to low flow in the CCW line from containment.

Date of issuance: November 22, 1993

Effective date: November 22, 1993

Amendment No.: 91

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992 (57 FR 55580)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 22, 1993.I11No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: July 20, 1993

Brief description of amendments: These amendments implement new 10 CFR Part 20 requirements relating to

radiological effluent releases, and change the frequency of reporting the release of radioactive effluents from semi-annual to annual.

Date of issuance: November 18, 1993

Effective date: November 18, 1993Amendment Nos. 157 and 151Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 18, 1993 (58 FR 43926)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 18, 1993

No significant hazards consideration comments received: No

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: June 7, 1993, as supplemented on October 1, 1993.

Brief description of amendment: This amendment modifies Technical Specification (TS) 4.6.A, Safety Injection and Containment Spray Systems, to: 1) require quarterly, vice monthly, testing of automatic core flooding and containment spray valves, 2) require that containment isolation valves not tested quarterly during reactor operation be tested during the next refueling outage, and 3) require an air flow test of all containment spray nozzles every 10 years, twice every 5 years. This amendment also modifies TS 4.6.B, Emergency Feedwater Pumps, to require quarterly, vice monthly testing of emergency and auxiliary feedwater pumps. Finally, minor editorial changes are made in TS 4.6.A and B to clarify existing requirements.

Date of issuance: November 5, 1993

Effective date: November 5, 1993

Amendment No.: 143

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 21, 1993 (58 FR 39053)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 5, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: May 7, 1993, as superseded September 28, 1993.

Brief description of amendment: The amendment adds a new Technical Specification (TS) 3/4.10.7, "Inservice Leak and Hydrostatic Testing," to Nine Mile Point Nuclear Station, Unit 2, TSs. The amendment also includes corresponding changes to the TS Index, Table 1.2, and provides Bases for TS 3/4.10.7. The added TS 3/4.10.7 permits the unit to remain in OPERATIONAL CONDITION 4 with average reactor coolant temperature being increased above 200°F during reactor coolant system inservice leak or hydrostatic tests provided the maximum reactor coolant temperature does not exceed 212°F and the following OPERATIONAL CONDITION 3 TSs are being met: (a) TS 3.3.2, "Isolation Actuation Instrumentation," Functions 1.a.2, 1.b, and 3.a and b of Table 3.3.2-1; (b) TS 3.6.5.1, "Secondary Containment Integrity;" (c) TS 3.6.5.2, "Secondary Containment Automatic Isolation Dampers;" and (d) TS 3.6.5.3, "Standby Gas Treatment System."

Date of issuance: November 12, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 53

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** June 9, 1993 (58 FR 32386) and renoticed October 13, 1993 (58 FR 52990)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 12, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: July 16, 1993

Brief description of amendments: The amendments revise the Technical Specifications contained in Appendix A of the Operating Licenses, to allow one of the required on-shift Senior Reactor Operator positions to be combined with the required Shift Technical Advisor position.

Date of issuance: November 15, 1993

Effective date: November 15, 1993Amendment Nos. 64 and 29

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 15, 1993 (58 FR 48387)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 15, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: August 20, 1993

Brief description of amendments: These amendments revised the surveillance requirements for the standby gas treatment system (SGTS) charcoal filter deluge system. The revised surveillance requirements reflect a planned modification of the deluge system actuation from an automatic to a manual operation.

Date of issuance: November 16, 1993

Effective date: As of its date of issuance and shall be implemented within 90 days of the date of issuance.Amendments Nos.: 181 and 186

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 15, 1993 (58 FR 48387)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 16, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: November 19, 1992, and supplemented December 29, 1992, May 28, 1993, and September 3, 1993

Brief description of amendment: The amendment revises Public Service Electric and Gas Company's (PSE&G) commitments in two Updated Final Safety Analysis Report (UFSAR) sections. Specifically, the amendment relieves PSE&G from its commitment to fully comply with the Emergency Diesel Generator fuel oil storage recommendations in Standard Review Plan Section 9.5.4, Paragraph I.1.d and Regulatory Guide 1.137, Revision 1.

Date of issuance: November 22, 1993

Effective date: November 22, 1993

*Amendment No.:*59

Facility Operating License No. NPF-57: This amendment revised the UFSAR.

Date of initial notice in **Federal Register:** February 17, 1993 (58 FR 8779)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 22, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: July 19, 1993, and supplemented by letter dated August 5, 1993

Brief description of amendments: The amendments delete Line Item 9, Boric Acid Tank Solution Level, from Tables 3.3-11 and 4.3-11 and the associated Action 3 of Technical Specification 3.3.3.7, Post Accident Monitoring System.

Date of issuance: November 16, 1993

Effective date: November 16, 1993

Amendment Nos. 147 and 125

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 1, 1993 (58 FR 42640)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 16, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: March 10, 1993 (TS 92-08)

Brief description of amendments: The amendments incorporate the technical specification changes necessary to reduce the boric acid concentration in the boric acid tanks to be reduced from 12 percent to approximately 3.5 to 4.0 percent.

Date of issuance: November 26, 1993

Effective date: November 26, 1993

Amendment Nos.: 172 - Unit 1; 163 - Unit 2

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** May 12, 1993 (58 FR 28058)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 26, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Texas Utilities Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: May 28, 1993, as supplemented by letter dated September 24, 1993.

Brief description of amendment: The amendments change the technical specifications by incorporating changes for Cycle 4 operations in Unit 1; specifically, to allow the use of additional NRC-approved methodologies and to revise core safety limit curves and N-16 overtemperature reactor trip setpoints. In addition, the amendments increase the minimum required reactor coolant system flow, remove a penalty on pressurizer pressure uncertainty, and include an operational enhancement for the treatment of the uncertainty allowance for the N-16 power indication.

Date of issuance: November 16, 1993

Effective date: November 16, 1993, to be implemented within 30 days of issuance.

Amendment Nos: Unit 1 - Amendment No. 21; Unit 2 - Amendment No. 7

Facility Operating License Nos. NPF-87 and NPF-89: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 18, 1993 (58 FR 43934). The September 24, 1993, submittal provided supplemental information to the application and did not change the initial no significant hazards determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 16, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P. O. Box 19497, Arlington, Texas 76019

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: June 23, 1993, as supplemented on October 5, 1993

Brief description of amendment: The amendment allows storage of new and spent fuel assemblies with an initial enrichment of Uranium-235 no greater than 5.0 weight percent.

Date of issuance: November 19, 1993

Effective date: November 19, 1993

*Amendment No.,*181

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 4, 1993 (58 FR 41516) The supplemental letter provided additional information that did not change the initial proposed no significant hazard consideration determination.

The Commission's related evaluation of the amendment is contained in an Environmental Assessment dated November 1, 1993, and in a Safety Evaluation dated November 19, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent, Public Announcement, or Emergency Circumstances)

During the period since publication of the last biweekly notice, the

Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By January 7, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such

a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director):** petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: June 17, 1993, as supplemented October 8, 1993.

Brief description of amendment: The amendment implemented administrative changes. The changes include providing consistency with Combustion Engineering Standard Technical Specifications on refueling frequency, incorporating bases information on pressurizer safety valves, correcting typographical and grammatical problems, and correcting mistakes in previous amendments.

Date of issuance: November 22, 1993

Effective date: November 22, 1993

Amendment No.: 157

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Public comments requested to proposed no significant hazards consideration: Yes, August 4, 1993 (58 FR 41509) and November 8, 1993 (58 FR 59280).

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated November 22, 1993.

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1875 Connecticut Avenue, N.W., Washington, D.C. 20009-5728

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

NRC Project Director: William D. Beckner

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: November 10, 1993, as supplemented November 16, 1993

Brief description of amendments: The amendments eliminate the simulated reactor coolant pump seal injection flow requirement for the flow balancing of the high head safety injection lines.

Date of issuance: November 23, 1993

Effective date: November 23, 1993

Amendment Nos.: 176 and 157

Facility Operating License Nos. NPF-4 and NPF-7: Amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No. Verbally, on November 8, 1993, and by letter dated November 10, 1993, the staff granted an enforcement discretion to be in effect until the amendments were issued.

The Commission's related evaluation of the amendments, consultation with the State of Virginia and final no significant hazards determination are contained in a safety evaluation dated November 23, 1993.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Dated at Rockville, Maryland, this 1st day of December 1993.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 93-29808 Filed 12-7-93; 8:45]

BILLING CODE 7590-01-F

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-33262; International Series Release No. 619; File No. SR-Amex-93-05]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the American Stock Exchange, Inc. Relating To the Listing and Trading of Flexible Exchange Options ("FLEX Options") Based on the Japan Index

December 1, 1993.

I. Introduction

On February 4, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposal to list and trade large-size, customized index options, referred to as Flexible Exchange Options ("FLEX Options") based on the Major Market ("XMI"), Institutional ("XII"), Standard & Poor's Corporation ("S&P") MidCap ("MID"), and Japan Indexes ("JPN" or "Index").[3] The Commission approved the Amex's FLEX Options framework on August 20, 1993 permitting the Exchange to list and trade FLEX Options based on the XMI,

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1993).

[3] The JPN Index is a modified price-weighted index that measures the aggregate performance of 210 common stocks actively traded on the Tokyo Stock Exchange ("TKE") that are representative of a broad cross section of Japanese industries. For additional information regarding the JPN Index, see Securities Exchange Act Release Nos. 28475 (September 27, 1990), 55 FR 40492 ("Japan Index Option Approval Order") and 31016 (August 11, 1992), 57 FR 37012 ("Japan Index Warrant Approval Order"). In approving JPN options the Commission believed that the Index would provide investors with an important trading and hedging vehicle that should accurately reflect the overall movement of the Japanese stock market. In addition, the Commission determined that the JPN was a broad-based index that should not be readily susceptible to manipulation.

XII, and MID Indexes.[4] At that time, however, the Commission deferred judgment on the JPN pending further review.

Notice of the proposed rule changes and Amendment No. 1 were published for comment and appeared in the **Federal Register** on April 29, 1993.[5] No comments were received on the proposal. This order approves the FLEX Option proposal as amended relating to the JPN Index.

II. Description of the Proposal

The purpose of the Amex's FLEX Option program is to provide a framework for the Exchange to list and trade index options that give investors the ability, within specified limits, to designate certain of the terms of the options. Consistent with the original FLEX Options Approval Order, the present proposal to trade FLEX Options based on the JPN will similarly permit market participants to designate certain terms of the options contract, such as the strike prices, exercise types, expiration date, and form of settlement.[6] Currently, the Amex lists and trades FLEX Options based on the following domestic indexes: XMI, XII, and MID. The component stocks of the JPN however consists of 210 actively-traded Japanese stocks traded on the TKE.[7] The Exchange believes that there is a growing market for customized FLEX Options based on a foreign index such as the JPN.

The design and construction of the JPN has not changed since the Commission approved the trading of options and warrants on the Index.[8] Specifically, the TKE-traded securities selected by the Amex for the JPN must meet eligibility standards with respect to market value, trading activity, and price level. Additionally, the Exchange implements share price eligibility standards to ensure that no single issue will have a disproportionate impact on the JPN. Moreover, in order to ensure that no industry group within the Japanese market dominates the Index, when selecting component Japanese securities for inclusion in the Index, the Amex gives consideration to the selection of securities that are representative of the various industry group components of the Japanese stock market.

The JPN is a modified price-weighted index.[9] The Amex, for the purposes of calculating the JPN, uses last sale price information of the component securities from the TKE. The JPN is denominated in U.S. dollars and calculated once a day and disseminated before the opening of trading in the United States. In calculating the JPN, 100 yen is assigned to equal one U.S. dollar. Thus, if the aggregate price of the Index's component stocks is 30,500 yen, the JPN value will be 305. This assures that the JPN value will correspond directly to changes in the aggregate yen prices of the component stocks and will not be affected by fluctuating yen/dollar exchange rates.

As proposed, Amex Rule 906G provides that FLEX Options are subject to maximum position and exercise limits of 200,000 contracts on the same side of the market on a given index, without aggregation for other contracts on the same index with one exception. This exception requires that at the close of business two days prior to the last day of trading of the calendar quarter, members must aggregate positions in P.M.-settled[10] FLEX Options and comparable quarterly expiration index options ("QIXs") with such positions not exceeding the QIX limits. The applicable hedge exemptions under Rule 904C may however be applied to aggregate positions.[11]

The Amex proposes that FLEX Options on the JPN be subject to position limits of 200,000 contracts on the same side of the market, which is identical to existing limits for XMI, XII, and MID FLEX Options.[12] In addition, the special aggregation provision in Rule 906G(c) for P.M.-settled FLEX Options and QIX options is intended by the Amex to apply to FLEX Options on the JPN and comparable QIX options on the JPN that may in the future be introduced. The Amex, however, is not currently trading a JPN QIX option nor has the Exchange proposed to do so.

III. Discussion

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6(b)(5) and 11A.[13] In particular, the Commission believes that the proposed rule change is designed to provide investors with a tailored or customized product for a broad-based index consisting of Japanese stocks that may be more suitable to their investment needs than the other outstanding FLEX index options. Moreover, consistent with Section 11A, the proposal should encourage fair competition among brokers and dealers and exchange markets, by allowing the Amex to compete with the growing OTC market in customized foreign index options.

A. Index Design

The Commission believes that because the JPN is a broad-based index comprised of 210 actively-traded, highly-capitalized stocks,[14] the trading of FLEX Options on the JPN on the Amex does not raise unique regulatory concerns. The Commission believes, as it did when the Amex's JPN option and warrant proposals were approved, that the broad diversification, large capitalization, and liquid markets for the JPN's component stocks significantly minimize the potential for manipulation of the Index.[15]

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[4] See Securities Exchange Act Release No. 32781 (August 20, 1993), 58 FR 45360 ("FLEX Options Approval Order").

[5] See Securities Exchange Act Release No. 32196 (April 22, 1993), 58 FR 26009. On April 12, 1993, the Exchange filed Amendment No. 1 setting forth applicable position and exercise limits for FLEX Options. This amendment was published for comment and appeared in the **Federal Register** noted above.

[6] The Commission has designated FLEX Options as standardized options for purposes of the options disclosure framework established under Rule 9b–1 of the Act. See Securities Exchange Act Release No. 31919 (February 23, 1993), 58 FR 12056 ("9b–1 Order"). For the same reasons as stated in the 9b–1 Order, JPN FLEX Options are deemed "standardized options" for purposes of the Rule 9b–1 options disclosure framework.

[7] See Japan Index Option Approval Order supra note 3.

[8] See Japan Index Option Approval Order and Japan Index Warrant Approval Order supra note 3.

[9] In a price-weighted index, an issue's weight in the index is based on its price per share rather than its total market capitalization (i.e., price per share times the number of shares outstanding). In order to prevent certain high-priced securities in the Index from having an inordinately higher weight in comparison to other stocks in the Index, the Amex "down scales" the price of these securities. In particular, for those component securities with a par value greater than 50 yen, the Amex calculates the price of that stock, for Index purposes, to be equal to the last sale price of the stock divided by the ratio of the par value of the stock to a par value of 50. Currently, there are four securities in the Index that are subject to this provision.

[10] The settlement value of a P.M.-settled stock index options contract is based on the closing prices of the component securities.

[11] Under the proposal, the Amex's position limits would be established as a three-year pilot, during or following which adjustments may be required. See letter from Ellen T. Kander, Special Counsel, Derivative Securities, Amex, to Richard Zack, Branch Chief, Division of Market Regulation, SEC, dated July 30, 1993. In addition, the Amex has stated that it will monitor the effect of the position limits at the end of the first year of trading and provide the Commission with a report concerning the adequacy of the limits and its effects on the underlying cash market. See, infra, discussion section on one year monitoring report.

[12] See supra note 4.

[13] 15 U.S.C. 78f(b)(5) and 78k–1 (1982). The discussion in the FLEX Options Approval Order, supra note 4, is incorporated herein.

[14] See Japan Index Option Approval Order and Japan Index Warrant Approval Order, supra note 3

[15] See Japan Index Option Approval Order supra note 3.

B. Surveillance Sharing

While the size of an underlying market is not necessarily determinative of whether a particular derivative product based on that market is readily susceptible to manipulation, the sheer size of the market for the securities underlying the JPN make it less likely that the proposed JPN FLEX Options are readily susceptible to manipulation. In addition, the Commission notes that the TKE is under the regulatory oversight of the Japanese Ministry of Finance ("MOF"). The MOF has responsibility for both the Japanese securities and derivative markets. Accordingly, the Commission believes that the ongoing oversight of the trading activity on the TKE by the MOF will help to ensure that the trading of JPN FLEX Options will be carefully monitored with a view toward preventing unnecessary market disruptions.

Finally, the Commission and the MOF have concluded a Memorandum of Understanding ("MOU") that provides a framework for mutual assistance in investigatory and regulatory matters.[16] Moreover, the Commission also has a longstanding working relationship with the MOF on these matters. Based on the longstanding relationship between the Commission and the MOF and the existence of the MOU, the Commission is confident that it and the MOF could acquire information from one another similar to that available pursuant to a surveillance sharing agreement between the Amex and the TKE about transactions in TKE-traded stocks related to JPN FLEX Options transactions on the Amex.[17] The Commission believes that the surveillance sharing arrangements between the Amex and the TKE are adequate to detect and deter potential market manipulations.

C. FLEX Options Framework

The Commission believes that the Amex proposal will help to promote the maintenance of a fair and orderly market, consistent with Sections 6(b)(5) and 11A, because the purpose of the proposal is to extend the benefits of a listed, exchange market in JPN options that have certain terms varied by the particular investor. The attributes of the Exchange's options market versus an over-the-counter ("OTC") market include, but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, standardized contract specifications, parameters and procedures for clearance and settlement, and the guarantee of OCC for all contracts traded on the Exchange.

In general, transactions in FLEX Options based on the JPN will be subject to many of the same rules that apply to index options traded on the Amex. In order to provide investors with the flexibility to designate certain terms of the options and accommodate the special trading of FLEX Options, however, several new rules will apply solely to FLEX Options.[18]

Due to the customized nature of these options, JPN FLEX Options, unlike regular JPN options, will not have trading rotations at either the opening or closing of trading. In addition, the individually-tailored auction process outlined in the FLEX Options Approval Order,[19] sets forth in detail the procedure of customized negotiation for those investors seeking particular flexibility in options terms. Accordingly, the Amex FLEX Options framework for trading stock index options, such as the JPN, varies from the traditional exchange procedure for trading non-FLEX stock index options, due to the special FLEX procedures allowing for limited individual negotiation of certain of the terms of the contract between the parties.

The Commission believes that the FLEX auction process appears reasonably designed to provide the benefits of a competitive Exchange auction environment for JPN options while allowing market participants the flexibility to negotiate certain terms. Accordingly, the Amex has established procedures for quotes upon requests which must then be firm for a designated period and which will be disseminated through the Options Price Reporting Authority ("OPRA").

The Commission further notes that JPN FLEX Options, like their regular JPN option counterparts, can be constructed with expiration exercise settlement based on the closing values of the component securities which can in some circumstances result in adverse effects for the markets in those securities.[20] Although the Commission has noted previously the benefits of basing the settlement of index products on opening as opposed to closing prices on expiration Fridays,[21] these benefits are reduced in the case of FLEX Options based on the JPN, because expiration of these stock index options will not correspond to the normal expiration of stock index options, stock index futures, and options on stock index futures. In particular, JPN FLEX Options will never expire on an "Expiration Friday" or any other "Expiration Fridays" in March, June, September, and December, thereby diminishing the impact that these FLEX Options could have on the underlying cash market.[22]

The Amex, pursuant to the existing FLEX Options position limit framework, has proposed to establish position limits of 200,000 contracts on the same side of the market for the JPN FLEX Option. The Commission finds that these proposed position limits are consistent with the FLEX Options position limit framework as set forth in the FLEX Options Approval Order.[23]

Nevertheless, because the position limits for JPN FLEX Options are much higher than those currently existing for outstanding exchange-traded JPN options and open interest in one or more FLEX series could grow to significant exposure levels, the Commission cannot rule out the potential for adverse effects on the securities markets for the component securities underlying the JPN FLEX Option. The Amex has taken several steps to address this concern, including establishing the FLEX position limits framework as a three-year pilot program and undertaking to monitor open interest, position limit compliance and potential adverse market effects carefully and to report the Commission after one year's experience trading JPN FLEX Options.[24] The reporting of the Amex's experience in connection with

[16] Memorandum of the United States Securities and Exchange Commission and the Securities Bureau of the Japanese Ministry of Finance on the Sharing of Information, dated May 23, 1986.

[17] It is the Commission's expectation that this information would include transaction, clearing, and customer information necessary to conduct an investigation.

[18] See FLEX Options Approval Order supra note 4.

[19] Id.

[20] See Securities Exchange Act Release No. 313330 (October 16, 1992), 57 FR 48408 ("A.M.-settled XII Approval Order).

[21] Id.

[22] Regular JPN options expire on the Saturday following the third Friday of the expiration month. The last trading day in an options series normally will be the second to last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday), except in the event of a holiday. The settlement value of the regular JPN is determined based on closing TKE prices of component securities in the afternoon trading session on the trading day in Japan following the last day of trading in the expiring contracts. Thus, normally, because trading in expiring options contracts will cease on a Thursday at 4:15 p.m. E.S.T., the regular JPN option settlement value will be determined at the close of the Friday afternoon TKE trading session, i.e., 1 a.m. E.S.T., on Friday morning. See Japan Index Option Approval Order supra note 3. JPN FLEX Options may not expire on any day that falls within two business days prior or subsequent to a third Friday-of-the-month expiration day for a non-FLEX index option.

[23] See FLEX Options Approval Order supra note 4.

[24] Id.

the trading of JPN FLEX Options will be consistent with the original FLEX Options Approval Order, and include, among other things:

- The type of strategies used by JPN FLEX Options market participants and whether JPN FLEX Options are being used, in lieu of existing standardized stock index options on the JPN.
- The type of market participants using JPN FLEX Options.
- The terms which are predominantly being "flexed" by market participants, i.e., strike prices, settlement value (A.M. v. P.M.), term of duration, European v. American style.
- The size of the JPN FLEX position on average, the size of the largest JPN FLEX positions on any given day and the size of the largest JPN FLEX position held by any single customer/member.
- The relationship between strike prices and current index value.
- Whether there is significant interest in long-term expirations greater than nine months.
- Any effect JPN positions have had on the underlying cash market.

In addition, the Commission expects and the Amex has agreed to monitor the actual effect of JPN FLEX Options once trading commences and take prompt action (including timely communication with marketplace self-regulatory organizations responsible for oversight of trading in component stocks) should any unanticipated adverse market effects develop.

Lastly, based on representations from the Amex, the Commission believes that the Amex and OPRA will have adequate systems processing capacity to accommodate the additional options listed in connection with JPN FLEX Options. Specifically, the Exchange represents that "the introduction of FLEX Options by the Amex will not degrade OPRA's throughput capacity, either on total throughput over the trading day or during the opening peaks." [25]

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is, consistent with the Act and sections 6 and 11A of the Act, in particular. In addition, the Commission also finds pursuant to Rule 9b–1 under the Act, that FLEX Options based on the JPN are standardized options for purposes of the options disclosure framework established under Rule 9b–1 of the Act.

[25] See letter from Charles H. Faurot, Managing Director, Market Data Services, Amex, to Richard Zack, Branch Chief, Division of Market Regulation, SEC, dated July 30, 1993.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, [26] that the proposed rule change (SR–Amex–93–05), pertaining to FLEX Options on the JPN is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29936 Filed 12–7–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33270; File No. SR–BSE–93–5]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 to Proposed Rule Change Relating to Exchange Inquiries and Requests for Information

December 2, 1993.

I. Introduction

On March 8, 1993, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Constitution and Rules relating to Exchange inquiries. On March 30, 1993, the BSE submitted to the Commission Amendment No. 1 to the proposed rule change.[3] On July 26, 1993, the BSE submitted to the Commission Amendment No. 2 to the proposed rule change.[4] On November 22, 1993, the BSE submitted to the Commission Amendment No. 3 to the proposed rule change.[5]

[26] 15 U.S.C. 78s(b)(2) (1982).

[27] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] See letter from Karen A. Aluise, Staff Attorney, BSE, to Diana Luka-Hopson, Branch Chief, Commission, dated March 25, 1993. Amendment No. 1 made a technical correction to the proposed rule change.

[4] See letter from Karen A. Aluise, Assistant Vice President, BSE, to Diana Luka-Hopson, Branch Chief, Commission, dated July 20, 1993. Amendment No. 2 revised proposed BSE Chapter XVIII, Section 5(b) regarding the failure to respond to Exchange inquiries. Subsequent to filing Amendment No. 2, the Exchange filed Amendment No. 3, which deleted BSE Chapter XVIII, Section 5(b) in its entirety. See Amendment No. 3, *infra* note 5.

[5] See letter from Karen A. Aluise, Assistant Vice President, BSE, to Louis A. Randazzo, Attorney, Commission, dated November 17, 1993. Amendment No. 3 deletes paragraph (b) to Chapter XVIII, Section 5 of the BSE Rules of the Board.

The proposed rule change, together with Amendment Nos. 1 and 2, was noticed in Securities Exchange Act Release No. 32752 (August 16, 1993), 58 FR 44709 (August 24, 1993). No comments were received on the proposal. This order approves the proposed rule change, and grants accelerated approval to Amendment No. 3.

II. Description of the Proposal

Currently, Article XIV, Section 6 of the BSE Constitution requires a two-thirds vote of the BSE's Board of Governors ("Board") to compel members or allied members to submit books and papers as are material and relevant to any matter under investigation by the Board or a BSE Committee. It provides further that any member or allied member that refuses or neglects to comply with this requirement, or willfully destroys any required evidence, or who, following a two-thirds vote of the Board, refuses or neglects to appear before the Board or any committee as a witness, or refuses to testify before the Board or any committee, may be suspended or expelled by the Exchange.

The BSE is amending Article XIV, Section 6 in several respects. First, the BSE is removing the requirement of a two-thirds vote of Board members to compel production of books and records or to compel an appearance by the member. Second, the changes expand authority to compel production of books and records beyond the Board to any Exchange committee or any authorized officer. The BSE's amendment also adds member organizations to the list of entities subject to the requirements of Article XIV, Section 6.[6]

The BSE is amending Chapter XVIII of the BSE Rules to adopt Section 5. Section 5 will provide that all members and member organizations and all associated persons, shall be required to: (1) Respond orally or in writing to any Exchange inquiry and (2) provide access to its books, records and accounts, as required to be maintained under section 17(a) of the Act,[7] within the timeframe specified by the Exchange in its request.[8]

The BSE states that the purpose of the proposed rule change is to clarify the

[6] The Exchange is also changing the phrase "allied member" in Article XIV, Section 6 of the BSE Constitution to "associated person."

[7] 15 U.S.C. 78q(a)(1) (1988).

[8] The Exchange stated that in determining the timeframe in the request, it considers, among other things, the volume of the information requested. Telephone conversation between Karen A. Aluise, Assistant Vice President, BSE, and Louis A. Randazzo, Attorney, Commission, on September 14, 1993.

regulatory obligation of Exchange members, member organizations and associated persons to comply with Exchange requests for information and to provide access to books and records required to be maintained under section 17(a) of the Act. In addition, the Exchange argues that the proposal is necessary to enable it to fulfill its responsibilities as a self-regulatory organization. Specifically, the Exchange states that the proposal is necessary to require its members, member organizations and associated persons to provide access to the books and records that are required to be maintained under section 17(a) of the Act.

The BSE believes that the proposal is consistent with section 6(b)(5) of the Act, which provides, in pertinent part, that the rules of an exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade and to protect the investing public.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of sections 6(b) (1) and (5) of the Act.[9] The Commission believes that the BSE's proposal is consistent with the requirements under section 6(b)(1) of the Act that an exchange be organized and have the capacity to carry out the purposes of the Act and to comply and enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Commission also believes that the proposal is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest in accordance with section 6(b)(5) of the Act.

The Commission believes that the BSE proposal is a reasonable measure which should further the section 6(b)(5) objectives of protecting investors and the public interest by strengthening compliance by members, member organizations and associated persons with the Exchange's requests for books and records. This should provide the Exchange with information on a more timely basis and therefore put the Exchange in a better position to detect and respond to fraudulent and deceptive acts and practices.

The Commission believes that new Chapter XVIII, Section 5 of the Rules that requires members, member organizations and associated persons to respond to an Exchange inquiry and to provide access to their books, records and accounts should assist the Exchange in its regulatory oversight capacity by ensuring that the Exchange receives member information in a timely fashion. The Commission believes that amending the BSE Constitution to require member organizations to comply with Exchange requests for information, as well as eliminating the requirement of a two-thirds vote of the Board to compel a member or associated person to submit its books or papers, is consistent with section 6(b)(5) in that it should prevent fraudulent and manipulative acts and practices by helping to expedite Exchange investigations using the books and records of a member, member organization or associated person.

In addition, the Commission believes that new Chapter XVIII, Section 5 reasonably balances the Exchange's regulatory interest in gaining timely access to the books, records and information of members and member organizations with its interest in providing fair procedures for the disciplining of members, member organizations or associated persons that refuse or neglect to comply with Exchange requests.[10]

The Commission finds good cause for accelerated approval of Amendment No. 3 to the proposed rule change prior to the thirtieth day after publication of notice of filing thereof. The BSE's original proposal was published in the **Federal Register** for the full statutory period and no comments were received.[11] Amendment No. 3 modifies the proposal to make certain adjustments to the proposed rule change that are not more burdensome and that leave its overall structure unchanged.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR-BSE-93-5 and should be submitted by December 29, 1993.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change, including Amendment No. 3 on an accelerated basis, (SR-BSE-93-5) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. 93-29939 Filed 12-7-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33261; File No. SR-DTC-92-11]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to the Elimination of Short Positions in a Retired Participant's Account

November 30, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change that would codify procedures for eliminating short positions remaining in a retired participant's account. The Commission published notice of the proposal in the **Federal Register** to solicit comment from interested

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[9] 15 U.S.C. 78f(b)(1) and (5) (1988).

[10] A violation of Chapter XVIII, Section 5 would subject a member, member organization or associated person to formal disciplinary proceedings pursuant to Chapter XXX of the BSE Rules of the Board. Chapter XXX, Sections 6 and 7 of the BSE Rules of the Board state, among other things, that except for decisions made by the Board, which become final when made, any determination made by the hearing panel shall become final within 20 days after its filing with the Secretary of the Exchange unless a request for review by the Board is filed with the Secretary prior to the end of such period. Upon review, the Board may, by majority vote, sustain any such determination including any sanction imposed or reverse, modify, limit or increase such determination or return the matter to the panel for further findings.

[11] See Securities Exchange Act Release No. 32752 (August 16, 1993), 58 FR 44709 (August 24, 1993).

[12] 15 U S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30-3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

persons.[2] No comments were received. This order approves the proposal.

I. Description

The proposed rule change sets forth DTC's procedure for eliminating the short positions of a participant that has requested that its account be closed for activity or for which DTC has ceased to act when the participant is unable or unwilling to cover the short position.[3] The proposed rule change codifies existing procedures which DTC has applied on an *ad hoc* basis to eliminate short positions from the accounts of participants that have retired from the DTC system.

Upon receipt of a participant's request that its account be closed for activity, and in the absence of an arrangement between the participant and DTC to resolve the short positions, DTC will notify the participant in writing that any short positions in the participant's account as of the date its account is closed and any short position created thereafter, may be subject to a buy-in by DTC. DTC will buy-in securities when DTC determines that the securities are readily marketable. The buy-in will be made at the prevailing market price. DTC will notify the participant that the buy-in will be funded by the short position penalty[4] or charged to the participant's account.

In situations when DTC determines that it is not appropriate to buy-in securities, such as when the securities comprising the short position are not readily marketable, DTC will extend an invitation to tender to participants having long positions in the issue through its Invitation to Cover Short Request ("ICSR") function.[5] DTC will purchase tendered securities with funds from the fee assessed to the retiring participant. For short positions that have been open more than thirty calendar days, the initial offering price and the fee assessed to the retiring participant will be 110% of the market value. If DTC is unable to purchase the securities at 110% of the market value within thirty days, DTC may increase the fee and offering price to 130% of market value.

If DTC is unable to purchase the securities within thirty days at 130% of market value through ICSR, DTC may move the remaining short positions from the participant's account to a special depository account.[6] Upon moving the short position to the special depository account, DTC will charge the participant 130% of the market value and close the participant's account. Thereafter, the participant will have no further obligation to DTC with respect to the short positions.

II. Discussion

The Commission believes the proposed rule change is consistent with a clearing agency's duty under section 17A(b)(3)(A)[7] to facilitate the prompt and accurate clearance and settlement of securities transactions and to safeguard securities and funds in its custody or control or for which it is responsible.

The proposal will permit DTC to take affirmative steps to resolve and reduce the risks associated with outstanding short positions of retiring participants. Under DTC's Procedures, participants are obligated to cover their short positions immediately.[8] DTC routinely assesses non-retiring participants a daily charge of 130% of the market value of the security as an incentive for the participant to cover the short position as soon as possible, and as a cushion to protect DTC in the event of a sharp rise in the market price of the security.[9] By assessing a 130% daily charge to retiring participants' accounts, DTC will limit its risk of loss to instances when there is a rise in the market price of the security above 130% of the amount DTC last collected from the retiring participant. Thus, the proposal will enable DTC to safeguard securities and funds in its custody or control consistent with the Act.[10]

The Commission believes it is prudent for DTC to use its ICSR facility to locate participants with long positions in the short security. In the event a short position creates a deficiency in DTC's inventory, DTC would be obligated to make sufficient securities available to satisfy withdrawal requests by either demanding delivery from the short participant or by buying-in the securities. Certain securities, however, may be difficult to buy-in.[11] In addition, DTC would be liable for the cost of obtaining the securities if that cost is not satisfied by the retiring participant. The use of ICSR makes it possible for DTC to locate securityholders and cover short positions in thinly-traded issues quickly. Thus, the use of DTC's ICSR procedures under this proposal will help DTC to facilitate the prompt and accurate clearance settlement of securities transactions consistent with the Act.

Finally, in the cases where DTC is unable to eliminate the short position by buying-in securities, the short position will be moved to a special depository account enabling a retiring participant to eliminate its obligation to cover the short position and sever its relationship with DTC. DTC's ability to move the short position to a special depository account also will benefit DTC and its active participants by allowing DTC to take affirmative steps to resolve, and thereby reduce the risks associated with outstanding short positions of retiring participants.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act, and, in particular, Section 17A.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-

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[2] Securities Exchange Act Release No. 31415 (November 6, 1992), 57 FR 54129.

[3] Short positions primarily are caused by rejects of deposits of securities that the depositing participant already has delivered to another participant, and by deliveries of securities that, because of late notification to DTC of partial calls, subsequently are determined to be called securities in DTC's call lottery. See Securities Exchange Act Release No. 26896 (June 5, 1989), 54 FR 25185.

[4] The "short position penalty" is 130% of the current market value of the short position. DTC will assess the participant's settlement account for 130% of the value of the short position on the day the penalty is imposed. Telephone conversation between Karen G. Lind, Associate Counsel, DTC, and Sonia G. Burnett, Attorney, Commission (July 22, 1993).

[5] ICSR is the DTC service that enables DTC participants having a short position in a certain security to invite tenders to cover the short position from DTC participants with a long position in the same or similar security. The inviting participant broadcasts its message to DTC on the Participant Terminal System ("PTS") or PTS, Jr. identifying, among other things, the security, the quantity, and price range. DTC automatically identifies which participants have a long position in the depository in the relevant security issue and sends an automated message over PTS to those participants, noting that if they are interested in tendering the securities, they should notify DTC. Until now, DTC would broadcast tender offers only at the request of a DTC participant unless the participant had a short position due to an error on DTC's part, in which case DTC would initiate the ICSR procedures. Under this rule, DTC will initiate the ICSR procedures. For further discussion of ICSR, *see* Securities Exchange Act Release Nos. 26896 (June 5, 1989), 54 FR 25185 [File No. SR-DTC-89-07]; and 27586 (January 4, 1990), 55 FR 1132 [File No. SR-DTC-89-18].

[6] The depository account will be designated to hold unresolved short positions only and will be segregated from DTC participants' accounts. Only DTC will have access to the account.

[7] 15 U.S.C. 78q-1(b)(3)(A) (1988).

[8] DTC Participant Operating Procedures, § C at 7.

[9] Securities Exchange Act Release No. 26896 (June 5, 1989), 54 FR 25185.

[10] DTC has represented to the Commission that it typically pays between 110-120% market value to cover short positions. Based on this experience, DTC expects it will be able to cover most short positions for less than 130% of the market value of the position. Letter from Karen G. Lind, Associate Counsel, DTC, to Sonia Burnett, Attorney, Commission (April 15, 1993).

[11] For example, thinly traded securities and certain municipal securities that were issued to fund a particular purpose may be in short supply.

DTC–92–11) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–29937 Filed 12–7–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33263; File No. SR–Phlx–93–48]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Priority of Options Orders for Equity Options and Index Options by Account Type

December 1, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 24, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Floor Procedure Advice ("Advice") B–6, Priority of Options Orders for Equity Options and Index Options by Account Type.[2] The amendment to Section B of the Advice would specifically state that violations of Advice B–6, accompanied by factors indicating that the violation was not a minor error, would be referred directly to the Business Conduct Committee, rather than being handled as a minor rule violation. The text of the proposed rule change is available at the Office of the Secretary, Phlx, and at the Commission.

[1] The Exchange previously submitted this proposal on November 2, 1993, however, in response to Commission concerns, the Phlx delayed the effectiveness of the rule change pending amendment and resubmission to the Commission in its current form.

[2] See Securities Exchange Act Release No. 28354 (August 20, 1990), 56 FR 15394.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Section B of Advice B–6 currently requires that orders for controlled accounts be represented as such in the trading crowd and marked on a floor ticked by circling the word "yield." The Phlx proposes an amendment to the text of Advice B–6 in order to codify the existing procedure that rule violations which are not considered "minor" can be referred directly to the Exchange's Business Conduct Committee ("BCC"). Specifically, before notice of the alleged violation is given, the staff of the Exchange reserves the right to recommend to the BCC that the violation at issue should not be deemed "minor," but rather that formal disciplinary action should be taken.

The Phlx believes this procedure is a fundamental aspect of exchange minor rule plans and has been in place since these plans were first approved by the Commission.[3] The Phlx further believes that Advice B–6, just as the other Phlx Advices, is currently subject to this caveat.

At this time, the Exchange proposes to amend the text of Advice B–6 to emphasize that only minor violations of the Advice will be treated as minor rule violations.

The Exchange believes that the proposed rule change is consistent with section 6 of the Act in general, and in particular, section 6(b)(5), in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and protect investors and the public interest, by emphasizing that certain violations of Advice B–6 are not considered minor, and are thus subject to the Exchange's formal disciplinary process.

[3] See *e.g.*, Securities Exchange Act Release No. 23296 (June 4, 1986), 51 FR 21430.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–93–48 and should be submitted by December 29, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 93-29938 Filed 12-7-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19917; 811-5777]

Crown America Separate Account A

December 2, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Crown America Separate Account A.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The Application was filed on September 30, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 27, 1993, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's request, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 120 Bloor Street East, Toronto, Canada M4W 1B8.

FOR FURTHER INFORMATION CONTACT: Evelyn C. Malone, Legal Technician, or Michael V. Wible, Special Counsel, on (202) 272-2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. On March 1, 1989, the Applicant filed with the SEC a notification of registration as an investment company on Form N-8A pursuant to Section 8(a) of the Act and a registration statement on Form N-8B-2 (File No. 811-5777) pursuant to Section 8(b) of the Act.

2. On March 1, 1989, the Applicant filed with the SEC a registration statement on Form S-6 (File No. 33-27274) pursuant to the Securities Act of 1933 (the "1933 Act"). This registration statement covered the registration of certain variable life insurance policies (the "Policies"). Pursuant to Rule 24f-2 under the Act, the Applicant registered an indefinite amount of securities (Policies) under the 1933 Act. The registration statement was never declared effective, and, consequently, no Policies were ever sold.

3. The Applicant was established by its depositor, Crown America Life Insurance Company ("Crown America"), as a separate account pursuant to a resolution adopted by the Board of Directors of Crown America on February 16, 1989, in accordance with applicable Kentucky insurance law and regulation. The Applicant was formed for the purpose of investing payments received under the Policies.

4. The Applicant does not now have, nor did it ever have, any assets. No interests in the Applicant have ever been issued. Accordingly, no distributions have been or will be made to securityholders of the Applicant in connection with the winding-up of Applicant's affairs pursuant to its termination.

5. The Applicant is being terminated because its depositor, Crown America, has decided not to sell the Policies or any other variable contracts that would be supported by the Applicant. On September 27, 1993, the Board of Directors of Crown America adopted a resolution authorizing the deregistration and termination of the Applicant.

6. During the last 18 months, the Applicant has not, for any reason, transferred any of its assets to a separate trust. At the time of filing this application, the Applicant retained no assets and has no securityholders. The Applicant does not have any debts or other liabilities which remain outstanding. The Applicant is not a party to any litigation or administrative proceeding. The Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs. The Applicant never sold any Policies or other securities of which it was the issuer.

[4] 17 CFR 200.30-3(a)(12) (1992).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-29934 Filed 12-7-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19919; 811-5747]

Crown America Separate Account D

December 2, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for registration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Crown America Separate Account D.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment Company.

FILING DATE: The Application was filed on September 30, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 27, 1993, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's request, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 120 Bloor Street East, Toronto, Canada N4W 1B8.

FOR FURTHER INFORMATION CONTACT: Evelyn C. Malone, Legal Technician, or Michael V. Wible, Special Counsel, on (202) 272-2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. On January 5, 1989, the Applicant filed with the SEC a notification of

registration as an investment company on Form N–8A pursuant to section 8(a) of the Act and a registration statement on Form N–3 (File No. 811–5747) pursuant to section 8(b) of the Act.

2. On January 5, 1989, the Applicant filed with the SEC a registration statement on Form N–3 (File No. 33–26414) pursuant to the Securities Act of 1933 (the "1933 Act"). This registration statement covered the registration of certain variable annuity contracts (the "Contracts"). Pursuant to Rule 24f–2 under the Act, the Applicant registered an indefinite amount of securities (Contracts) under the 1933 Act. The registration statement was never declared effective, and, consequently, no Contracts were ever sold.

3. The Applicant was established by its depositor, Crown America Life Insurance Company ("Crown America"), as a separate account pursuant to a resolution adopted by the Board of Directors of Crown America on December 15, 1988, in accordance with applicable Kentucky insurance law and regulation. The Applicant was formed for the purpose of investing payments received under the Contracts.

4. The Applicant does not now have, nor did it ever have, any assets. No interests in the Applicant have ever been issued. Accordingly, no distributions have been or will be made to security holders of the Applicant in connection with the winding-up of Applicant's affairs pursuant to its termination.

5. The Applicant is being terminated because its depositor, Crown America, has decided not to sell the Contracts or any other variable contracts that would be supported by the Applicant. On September 27, 1993, the Board of Directors of Crown America adopted a resolution authorizing the deregistration and termination of the Applicant.

6. During the last 18 months, the Applicant has not, for any reason, transferred any of its assets to a separate trust. At the time of filing this application, the Applicant retained no assets and has no security holders. The Applicant does not have any debts or other liabilities which remain outstanding. The Applicant is not a party to any litigation or administrative proceeding. The Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs. The Applicant never sold any Contracts or other securities of which it was the issuer.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29935 Filed 12-7-93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19921; File No. 812–8590]

Invesco Variable Investment Funds, Inc., et al.

December 2, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Invesco Variable Investment Funds, Inc. (the "Fund") and Invesco Funds Group, Inc. ("Invesco").

RELEVANT 1940 ACT SECTION: Order requested under section 6(c) of the 1940 Act from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the Act and rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit shares of the Fund to be sold to and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies (the "Participating Insurance Companies").

FILING DATE: The application was filed on September 22, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 27, 1993 and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: Glen A. Payne, Esq., Vice President & General Counsel, Invesco Funds Group, Inc., 7800 E. Union Ave., suite 800, Denver, Colorado 80237.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Attorney, or Wendell M. Faria, Deputy Chief, both at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application, the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. The Fund, a Maryland corporation, is registered under the Act as an open-end management investment company of the series type. The Fund currently offers shares in four separate investment portfolios: An industrial income portfolio; a total return portfolio; a high yield portfolio and a utility portfolio. The Fund may create additional portfolios in the future and applicants therefore request relief that would encompass current portfolios of the Fund as well as any future portfolios of the Fund.

2. Invesco, an indirect wholly-owned subsidiary of Invesco, PLC, is registered under the Investment Advisers Act of 1940 and will serve as investment adviser to each portfolio of the Fund. Invesco will also serve as the distributor of the Fund's shares. Invesco Capital Management, Inc., an indirect wholly-owned subsidiary of Invesco PLC, will serve as sub-adviser to the total return fund, while Invesco Trust Company, a wholly-owned subsidiary of Invesco, will serve as sub-adviser to the industrial income, high yield and utilities portfolios.

3. Fund shares will be offered only to separate accounts of various insurance companies that may or may not be affiliated with one another (the "Participating Insurance Companies"). Consequently, the Fund will serve as the investment vehicle for various insurance products, including variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts, and flexible premium variable life insurance contracts.

4. Participating Insurance Companies will be limited to insurance companies that enter into participation agreements with the Fund and Invesco ("Participation Agreements"). Applicants state that the terms of the Participation Agreements will obligate each Participating Insurance Company to fulfill its obligations under, and abide by the terms and conditions of, any order granting this application.

5. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance

separate accounts of a single insurance company (or of two or more affiliated insurance companies) is referred to as "mixed funding". The use of a common management company as the underlying investment medium for variable annuity and variable life insurance separate accounts of unaffiliated insurance companies is referred to as "shared funding". "Mixed and shared funding" denotes the use of a common management company to fund the variable annuity and variable life separate accounts of other affiliated and unaffiliated insurance companies.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust (a "Trust"), rule 6e–2(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The relief provided by rule 6e–2 is available to a separate account's investment adviser, principal underwriter, and sponsor or depositor. The exemptions granted by rule 6e–2(b)(15) are available only where the management investment company underlying the Trust offers its shares "exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company." The relief granted by rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that offers its shares to a variable annuity separate account of the same company or of any other affiliated or unaffiliated life insurance company. Therefore, rule 6e–2(b)(15) precludes mixed and shared funding.

2. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, rule 6e–3(T)(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require "pass-through" voting with respect to an underlying fund's shares. The exemptions granted to a separate account by rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company." Rule 6e–3(T) permits mixed funding. Rule 6e–3(T), however, does not permit shared funding, because the relief granted by rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of a management company that also offers its shares to separate accounts, including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts, of unaffiliated life insurance companies.

3. Applicants therefore request relief from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit mixed and shared funding.

4. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a) (1) or (2). Rules 6e–2(b)(15) and 6e–3(T)(b)(15) provide exemptions from section 9(a) under certain circumstances, subject to limitations on mixed and shared funding. The relief provided by rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits a person disqualified under section 9(a) to serve as an officer, director, or employee of the life insurer, or of any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to section 9(a) are participating in the management or administration of the fund.

5. Applicants state that the partial relief from section 9(a) found in rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Applicants state that those 1940 Act rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies within the organization. Applicants state that it is therefore unnecessary to apply section 9(a) to individuals in various unaffiliated Participating Insurance Companies (or affiliated companies of those Participating Insurance Companies) that may utilize the Fund as the funding medium for variable contracts.

6. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. The application states that pass-through voting privileges will be provided with respect to all contract owners so long as the Commission interprets sections 13(a), 15(a) and 15(b) of the 1940 Act to require such privileges for variable contract owners.

7. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming observance of the limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder.

Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority

Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance company may disregard voting instructions of its contract owners if the contract owners initiate any change in the company's investment policies, principal underwriter, or any investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(15)(ii) and (b)(7)(ii) (B) and (C) of each rule.

8. Applicants represent that the right of the Participating Insurance Companies to disregard voting instructions of contract owners provided by rules 6e–2(b)(15) and 6e–3(T)(b)(15) does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under the rules, an insurer can disregard voting instructions only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment

policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in rules 6e–2 and 6e–3(T) under the 1940 Act that the insurance company's disregard of voting instructions be both reasonable and based on specific good faith determinations.

9. Applicants argue that use of the Fund as a common investment medium for variable contracts would permit the achievement of economies of scale that would serve to reduce expenses borne by contract owners, would permit the expansion of the variety of funding options available under existing variable contracts, and encourage a broader universe of life insurance companies to offer variable contracts. Applicants note that certain smaller life insurance companies may not find it economically feasible to enter the variable contract business on their own. Use of a shared funding vehicle could help alleviate this problem because, according to Applicants, Participating Insurance Companies would benefit not only from the investment and administrative expertise of a successful investment adviser such as Invesco but also from the cost efficiencies and Investment flexibility afforded by a large pool of funds. Applicants state that making the Fund available for mixed and shared funding will encourage more insurance companies to offer variable contracts which will then increase competition with respect to both the design and the pricing of variable contracts. This can be expected to result in greater product variation and lower charges. Applicants also argue that granting the requested relief would result in an increased amount of assets available for investment by the Fund. This, in turn, may benefit variable contract owners not only by promoting economies of scale, but also by permitting increased safety through greater diversification, or by making the addition of new investment portfolios more feasible.

10. Applicants believe that there is no significant legal impediment to permitting mixed and shared funding. Applicants state that separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds not affiliated with the depositor or sponsor of the separate account. Applicants also believe that mixed and shared funding will have no adverse federal income tax consequences.

Applicants' Conditions

Applicants have consented to the following conditions if the requested order is granted:

1. A majority of the Board of Directors of the Fund (the "Board") shall consist of persons who are not "interested persons" of the Fund, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of the death, disqualification, or bona fide resignation of any director or directors, then the operation of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor the Fund for the existence of any material irreconcilable conflict between the interests of the contract owners of all of the separate accounts investing in the Fund. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Fund are managed; (e) a difference in voting instructions given by owners of variable annuity contracts and owners of variable life insurance contracts; or (f) a decision by an insurer to disregard the voting instructions of contract owners.

3. The Participating Insurance Companies and Invesco will report any potential or existing conflicts to the Board. Participating Insurance Companies and Invesco will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised, including information as to a decision by an insurer to disregard voting instructions of contract owners. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of the Participating Insurance Companies under the Participation Agreements and the Participation Agreements shall provide that these responsibilities will be carried out with a view only to the interests of contract owners.

4. If it is determined by a majority of the Board, or by a majority of its disinterested directors, that an irreconcilable material conflict exists, the relevant Participating Insurance Companies shall, at their expense and to the extent reasonably practicable, take steps necessary to remedy or eliminate the irreconcilable material conflict, including (a) Withdrawing the assets allocable to some or all of the separate accounts from the Fund and reinvesting such assets in a different investment medium including another portfolio of the Fund, or submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners; and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity contract owners or variable life insurance contract owners) that votes in favor of such segregation, or offering to the affected variable contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account.

If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of the Fund, to withdraw the separate account investment in the Fund and no charge or penalty will be imposed as a result of such a withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies under the participation agreements. The responsibility to take such remedial action shall be carried out with a view only to the interests of contract owners. For purposes of this Condition Four, a majority of the disinterested members of the Board shall determine whether any proposed action adequately remedies any material irreconcilable conflict, but, in no event, will the Fund or Invesco be required to establish a new funding medium for any variable contract. Further, no Participating Insurance Company shall be required by this Condition Four to establish a new funding medium for any variable contract if any offer to do so has been declined by a vote of a majority of the affected contract owners.

5. A Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known promptly and in writing to all Participating Insurance Companies.

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contract owners so long as the Commission interprets the 1940 Act to require pass-through voting privileges for variable contract owners. Accordingly, the Participating Insurance Companies will vote shares of the Fund held in their separate accounts in a manner consistent with voting instructions timely received from contract owners. Participating Insurance Companies will be responsible for assuring that each of their separate accounts calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts will be a contractual obligation of all Participating Insurance Companies under the Participation Agreements. The Participating Insurance Company will vote shares for which it has not received voting instructions as well as shares attributable to it in the same proportion as it votes shares for which it has received instructions.

7. All reports received by the Board of potential or existing conflicts, and all Board action with regard to: (a) Determining the existence of a conflict; (b) notifying Participating Insurance Companies of a conflict; and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

8. The Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. The Fund shall disclose in its prospectus that: (a) The Fund is intended to be a funding vehicle for all types of variable annuity and variable life insurance contracts offered by affiliated and unaffiliated insurance companies; (b) material irreconcilable conflicts among interests of various contract owners may arise from mixed and shared funding arrangements; and (c) the Board will monitor for the existence of any material irreconcilable conflicts and determine what action, if any, should be taken in response to such conflicts.

9. The Fund will comply with all provisions of the 1940 Act requiring voting by shareholders, and, in particular, the Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act, (although the Fund is not within the trusts described in Section 16(c) of the 1940 Act), as well as with Section 16(a), and, if applicable, Section 16(b) of the 1940 Act. Further, the Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

10. If and to the extent that Rules 6e–2 and 6e–3(T) are amended (or if Rule 6e–3 under the 1940 Act is adopted) to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Fund and the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent applicable.

11. No less than annually, the Participating Insurance Companies and/or Invesco shall submit to the Board such reports, materials, or data as the Board may reasonably request so that the Board may carry out fully the obligations imposed upon it by the conditions contained in the application. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Insurance Companies to provide these reports, materials, and data to the Board shall be a contractual obligation of all Participating Insurance Companies under the Participation Agreements.

Conclusion

For the reasons stated above, Applicants believe that the requested exemptions, in accordance with the standards of section 6(c), are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29932 Filed 12–7–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19920; File No. 812–8612]

Putnam Capital Manager Trust, et al.

December 2, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Putman Capital Manager Trust, (the "Trust") Putnam Investment Management, Inc. ("Putnam") and certain life insurance companies and their separate accounts investing now or in the future in the Trust (collectively, the "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b) (15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit shares of the Trust to be sold to and held by separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies.

FILING DATES: The application was filed on October 12, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 27, 1993, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, One Post Office Square, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Senior Attorney, or Wendell M. Faria, Deputy Chief at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a

fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is an open-end management investment company organized as a Massachusetts business trust. The Trust currently consists of nine separate investment portfolios, each with its own investment objective or objectives and policies.

2. Putnam, a corporation organized under the laws of Delaware, is the investment adviser for the Trust. Putnam is registered as an investment adviser under the Investment Advisers Act of 1940.

3. Shares of the Trust are currently offered only to Putnam Capital Manager Trust Separate Account of Hartford Life Insurance Company, Putnam Capital Manager Trust Separate Account Two of ITT Hartford Life and Annuity Insurance Company, Putnam Capital Manager Trust Separate Account One of Hartford Life and Accident Insurance Company, and Separate Account VL I of the Hartford Life Insurance Company (which are all registered as unit investment trusts under the 1940 Act) in connection with their issuance of variable annuity contracts and variable life insurance contracts. The Trust intends, however, to offer shares of its existing and future portfolios to separate accounts of other insurance companies, including insurance companies that are not affiliated with Hartford Life Insurance Company or ITT, and to serve as the investment vehicle for various types of insurance products, which may include variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts, and flexible premium variable life insurance contracts ("Variable Contracts"). Insurance companies whose separate account or accounts purchase shares of the Trust are referred to herein as "participating insurance companies."

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The relief provided by Rule 6e–2 is also available to a separate account's investment adviser, principal underwriter, and sponsor or depositor. The exemptions granted by Rule 6e–2 are available only where all of the assets of the separate account consist of the shares of one or more management investment companies which offer their shares exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company. Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of a management company that also offers its shares to a variable annuity separate account of the same company or any other life insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as "mixed funding."

2. In addition, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying management investment company that also offers its shares to separate accounts funding variable contracts of one of more unaffiliated life insurance companies. The use of a common management investment company as the underlying investment medium for variable life insurance separate accounts of one insurance company and separate accounts funding variable contracts of one or more unaffiliated life insurance companies is referred to herein as "shared funding."

3. In connection with the funding of flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The relief provided by Rule 6e–3(T) is also available to a separate account's investment adviser, principal underwriter, and sponsor or depositor. The exemptions granted by Rule 6e–3(T) are available only where all of the assets of the separate account consist of shares of one or more registered management investment companies which offer their shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company." Therefore, Rule 6e–3(T) permits mixed funding while not permitting shared funding.

4. Applicants therefore request that the Commission, under its authority in Section 6(c) of the 1940 Act, grant relief from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) (and any comparable permanent rule) thereunder, to the extent necessary to permit shares of the Trust to be offered and sold to, and held by, variable life insurance separate accounts of unaffiliated life insurance companies (shared funding) including variable annuity and single, scheduled, and flexible premium variable life insurance separate accounts.

5. Section 9(a) of the 1940 Act makes it unlawful for any company to serve as investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a) (1) or (2). Rule 6e–2(b)(15) (i) and (ii) and Rule 6e–3(T)(b)(15) (i) and (ii) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. The relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying investment company. The relief provided by Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(ii) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) participates in the management or administration of the fund.

6. Applicants state that the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9, in effect, limits the monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants state that Rules 6e–2 and 6e–3(T) recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in that organization.

7. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide partial exemptions from Sections 13(a), 15(a) and 15(b) of the 1940 Act to the extent

that those sections have been deemed to require "pass-through" voting with respect to management investment company shares held by a separate account.

Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract holders in connection with the voting of shares of an underlying fund if such instructions would require such shares to be voted to cause such companies to make, or refrain from making, certain investments which would result in changes in the subclassification or investment objectives of such companies or to approve or disapprove any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority, subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of such Rules.

Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance company may disregard contractowners' voting instructions if the contractowners initiate any change in such company's investment polities, principal underwriter, or any investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraph (b)(5)(ii) and (b)(7)(ii) (B) and (C) of each Rule.

8. Applicants submit that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. In this regard, Applicants state that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. Accordingly, Applicants submit that the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

9. Applicants state further that, under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), the right of the insurance company to disregard contractowners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts, and that affiliation does not eliminate the potential, if any, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contractowners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations.

10. Applicants submit that mixed funding and shared funding should benefit variable contractowners by: (1) eliminating a significant portion of the costs of establishing and administering separate funds; (2) allowing for a greater amount of assets available for investment by the Trust, thereby promoting economies of scale, permitting increased safety through greater diversification, and/or making the addition of new portfolios more feasible; and (3) encouraging more insurance companies to offer variable contracts, resulting in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Each portfolio of the Trust will be managed to attempt to achieve its investment objectives and not to favor or disfavor any particular participating insurer or type of insurance product.

11. Applicants believe that there is no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as unit investment trusts have historically been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Applicants also believe that mixed and shared funding will have no adverse federal income tax consequences.

Applicants' Conditions

The Applicants have consented to the following conditions:

1. A majority of the Board of Trustees of the Trust shall consist of persons who are not "interested persons" of the Trust as defined by Section 2(a)(19) of the 1940 Act and the Rules thereunder and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or trustees, then the operation of this condition shall be suspended: (i) For a period of 45 days if the vacancy or vacancies may be filled by the Board of Trustees; (ii) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application.

2. The Board of Trustees will monitor the Trust for the existence of any material irreconcilable conflict between the interests of the contractowners of all separate accounts investing in the Trust. A material irreconcilable conflict may arise for a variety of reasons, including: (i) An action by any state insurance regulatory authority; (ii) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax or securities regulatory authorities; (iii) an administrative or judicial decision in any relevant proceeding; (iv) the manner in which the investments of a series of the Trust are being managed; (v) a difference in voting instructions given by variable annuity contractowners and variable life insurance contractowners; or (vi) a decision by a participating insurance company to disregard the voting instructions of contractowners.

3. Participating insurance companies and Putnam will report any potential or existing conflicts to the Board of Trustees of the Trust. Participating insurance companies and Putnam will be responsible for assisting the Board of Trustees of the Trust in carrying out its responsibilities under these conditions, by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each participating insurance company to inform the Board whenever contractowner voting instructions are disregarded. These responsibilities will be contractual obligations of all participating insurance companies investing in the Trust under their agreements governing participation therein, and such agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contractowners.

4. If a majority of the Board of Trustees of the Trust, or a majority of its disinterested trustees, determine that a material irreconcilable conflict exists, the relevant participating insurance companies shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested Trustees) take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including: (i) Withdrawing the assets allocable to some or all of the separate accounts from the Trust or any portfolio thereof and reinvesting such assets in a different investment medium (including another portfolio of the Trust, if any) or submitting the question whether such segregation should be implemented to a vote of all affected contractowners and, as appropriate, segregating the assets of any appropriate group (i.e., annuity contractowners, life insurance contractowners, or variable contractowners of one or more

participating insurance companies) that votes in favor of such segregation, or offering to the affected contractowners the option of making such a change; and (ii) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a participating insurance company's decision to disregard contractowner voting instructions, and that decision represents a minority position or would preclude a majority vote, the participating insurance company may be required, at the election of the Trust, to withdraw its separate account's investment therein, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Trust and these responsibilities will be carried out with a view only to the interests of the contractowners.

For the purposes of this condition (4), a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Trust or Putnam be required to establish a new funding medium for any variable contract. No participating insurance company shall be required by this condition (4) to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contractowners materially adversely affected by the irreconcilable material conflict.

5. The Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known promptly in writing to all participating insurance companies.

6. Participating insurance companies will provide pass-through voting privileges to all variable contractowners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contractowners. Accordingly, participating insurance companies will vote shares of each series of the Trust held in their separate accounts in a manner consistent with timely voting instructions received from contractowners. Each participating insurance company will vote shares of the Trust held in its separate accounts for which no timely voting instructions from contractowners are received, as well as shares it owns, in the same proportion as those shares for which voting instructions are received. Each participating insurance company shall be responsible for assuring that each of its separate accounts participating in the Trust calculates voting privileges in a manner consistent with the other participating insurance companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Trust shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Trust.

7. The Trust will notify all participating insurance companies that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. The Trust shall disclose in its prospectus that (1) shares of the Trust may be offered to insurance company separate accounts that fund both variable annuity and variable life insurance contracts, (2) the interests of various contractowners participating in the Trust might at some time be in conflict because of differences of tax treatment or other considerations, and (3) the Board of Trustees will monitor for any material conflicts and determine what action, if any, should be taken.

8. All reports received by the Board of Trustees regarding potential or existing conflicts, and all Board action with respect to determining the existence of a conflict, notifying participating insurance companies of a conflict and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board of the Trust or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. If and to the extent Rule 6e–2 and Rule 6e–3(T) are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested, then the Trust, and/or the participating insurance companies, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

10. The Trust will comply with all provisions of the 1940 Act requiring voting by shareholders and the Trust will either provide for annual meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Trust is not one of the trusts described in Section 16(c) of the 1940 Act) as well as with Sections 16(a) and, if and when applicable, 16(b). Further, the Trust will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

11. The participating insurance companies and/or Putnam, at least annually, shall submit to the Board of Trustees of the Trust such reports, materials or data as the Board reasonably may request so that it may fully carry out the obligations imposed upon it by these stated conditions, and said reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the participating insurance companies to provide these reports, materials, and data to the Board of Trustees of the Trust when it so reasonably requests, shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Trust.

Conclusion

For the reasons stated above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29933 Filed 12–7–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to

comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency clearance officer: Cleo Verbillis, Small Business Administration, 409 3RD Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.

OMB reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Statement of Personal History

Form No.: SBA Form 912

Frequency: On Occasion

Description of Respondents: Applicants for Assistance or Temporary Employment in Disaster Office

Annual Responses: 30,000

Annual Burden: 2,500

Dated: December 3, 1993.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 93–29967 Filed 12–7–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2663]

Missouri; Amendment #10; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective October 26, 1993, to include Ozark County, Missouri as a disaster area as a result of damages caused by severe storms and flooding beginning on June 10, 1993 and continuing through October 25, 1993.

In addition, applications for economic injury loans from small businesses located in contiguous Baxter County, Arkansas, may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the termination date for filing applications for physical damage is December 15, 1993 and for economic injury the deadline is April 11, 1994.

The economic injury number for Missouri is 793300 and for Arkansas the number is 793700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 24, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–29968 Filed 12–7–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2668]

South Dakota; Amendment #6; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective September 10, 1993, to establish the incident period for this disaster as beginning on May 6, 1993 and continuing through September 10, 1993.

All other information remains the same, i.e., the termination date for filing applications for physical damage is December 15, 1993 and for economic injury the deadline is April 19, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 24, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–29969 Filed 12–7–93; 8:45 am]

BILLING CODE 8025–01–M

Rubber City Capital Corp. (License No. 05/05–5201); Surrender of License

Notice is hereby given that Rubber City Capital Corporation, 1144 East Market Street, Akron, Ohio 44316, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Rubber City Capital Corporation was licensed by the Small business Administration on August 14, 1985.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on this date, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 29, 1993.

Charles R. Hertzberg,

Associate Administrator for Investment.

[FR Doc. 93–29970 Filed 12–7–93; 8:45 am]

BILLING CODE 8025–01–M

Exeter Venture Lenders, L.P. (Application No. 99000091); Filing of an Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1993)) by Exeter Venture Lenders, L.P., 122 East 42nd Street, New York, New York 10168, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. et. seq.), and the Rules and Regulations promulgated thereunder.

Exeter Venture Lenders, L.P. will be managed by Keith R. Fox. The following limited partners own 10 percent or more of the proposed SBIC:

Name	Percentage of ownership
William A.M. Burden & Co., 630 5th Avenue, New York, New York 10111	37.00
Electra Investment Trust PLC, 65 Kingsway, London, U.K., WC2B 6QT	14.74

The applicant will begin operations with capitalization of approximately $13.6 million and will be a source of debt and equity financings for qualified small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: December 2, 1993.

Charles R. Hertzberg,

Associate Administrator for Investment.

[FR Doc. 93–29971 Filed 12–7–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Chittenden County and Washington County, VT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplemental draft environmental impact statement will be prepared for a proposed highway project in Chittenden County and Washington County, Vermont.

FOR FURTHER INFORMATION CONTACT: Donald West, Division Administrator, Federal Highway Administration, Federal Building, Montpelier, VT 05601, Telephone (802) 828–4423.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Vermont Agency of Transportation will prepare a supplemental draft Environmental Impact Statement (EIS) on a proposal to improve Interstate 89 (I–89) in Chittenden County, Vermont. The proposed improvement would involve the construction of an interchange between I–89 and U.S. Route 2 (U.S. 2) in Bolton. The proposed interchange would consist of exit and entrance ramps on I–89 north and south bound lanes. The original draft EIS for the improvements (FHWA–VT–EIS–90–01D) was approved on December 12, 1990. The supplemental draft EIS will reevaluate most areas covered by the original draft EIS. Additional research will be conducted to further analyze the purpose and need for the project, potential project alternatives, the environment affected by the project, and the potential secondary and cumulative impact.

The interchange is proposed to provide for existing and projected traffic and area access demands. Alternatives under consideration include: (1) Taking no action; (2) improving U.S. 2 between Richmond and Waterbury; (3) constructing a centralized interchange between I–89 and U.S. 2 in Bolton; (4) constructing separate north and south bound interchanges between I–89 and U.S. 2 in Bolton.

No formal scoping meeting will be held. A Public Corridor Hearing was held in Bolton, Vermont on February 27, 1991. Comments have been received to the draft EIS. Notice by letter will be sent to those individuals and agencies commenting on the December 12, 1990 draft EIS. The supplemental draft EIS will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal, for their comments.

Comments and suggestions are invited from all interested parties to ensure that the full range of issues related to this proposed action are addressed and that all significant issues are identified. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: November 29, 1993.

William K. Fung,

Engineering Coordinator, Montpelier.

[FR Doc. 93–29871 Filed 12–7–93; 8:45 am]

BILLING CODE 4910–22–P

Sunshine Act Meetings

Federal Register
Vol. 58, No. 234
Wednesday, December 8, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Thursday, December 9, 1993, to consider the following matter:

Summary Agenda:

No cases scheduled.

Discussion Agenda:

Memorandum and resolution re: Proposed amendments to Part 345 of the Corporation's rules and regulations, entitled "Community Reinvestment," which would provide clearer guidance to financial institutions on the nature and extent of their Community Reinvestment Act obligation and the methods by which the obligation will be assessed and enforced.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g. sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942-3132 (Voice); (202) 942-3111 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Deputy Executive Secretary of the Corporation, at (202) 898-6757.

Dated: December 6, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93-30142 Filed 12-6-93; 2:44 pm]

BILLING CODE 6714-01-M

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 3-94

Notice of Meetings: Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulation (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Fri., Dec. 17, 1993 at 10: a.m.—
Consideration of Proposed Decisions on claims against Iran.
Hearings on the record on objections to Proposed Decisions in the following claims against Iran:
IR-1986—Clarence Simmons
IR-2151—Gerald W. Harrison, Jr.
IR-3107—Eliel Dye, Phyllis Dye.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 601 D Street, NW., Room 10000, Washington, DC 20579. Telephone: (202) 208-7727.

Dated at Washington, DC, on December 6, 1993.

Judith H. Lock,

Administrative Officer.

[FR Doc. 93-30156 Filed 12-6-93; 3:31 pm]

BILLING CODE 4410-01-M

POSTAL RATE COMMISSION

Meeting

TIME AND DATE: 9:30 a.m., December 13, 1993.

PLACE: Conference Room, 1333 H Street NW., Suite 300, Washington, DC 20268.

STATUS: Closed.

MATTERS TO BE CONSIDERED: R90-1 Remand.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Suite 300, 1333 H Street NW., Washington, DC 20268-0001, Telephone (202) 789-6840.

Charles L. Clapp,

Secretary.

[FR Doc. 93-30053 Filed 12-6-93; 10:11 am]

BILLING CODE 7710-FW-P

federal register

Wednesday
December 8, 1993

Part II

Department of Education

National Institute on Disability and Rehabilitation Research; Funding Priorities for Fiscal Year 1994–1995 and Applications for Certain New Awards for Fiscal Year 1994; Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Funding Priorities for Fiscal Years 1994–1995

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for fiscal years 1994–1995 for Research and Demonstration Projects.

SUMMARY: The Secretary announces funding priorities for Research and Demonstration (R&D) projects under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1994–1995. The Secretary takes this action to focus research attention on areas of national need consistent with NIDRR's long-range planning process. These priorities are intended to improve rehabilitation services and address problems encountered by individuals with disabilities in their daily activities.

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: David Esquith, U.S. Department of Education, 400 Maryland Avenue SW., Switzer Building, room 3424, Washington, DC 20202–2601. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

SUPPLEMENTARY INFORMATION: This notice contains two final priorities for the R&D program. These final priorities focus on (1) the rehabilitation of migrant and seasonal farmworkers with disabilities, and (2) community planning and education to further the implementation of the Americans with Disabilities Act (ADA). Authority for the R&D program of NIDRR is contained in section 204(a) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762).

Under this program the Secretary makes awards to public agencies and organizations and to nonprofit and for-profit private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations. This program is designed to assist in the provision of vocational and other rehabilitation services through planning and conducting research and demonstrations. It is also designed to assist in the development of solutions to the problems encountered by individuals with disabilities in their daily activities (see 34 CFR 351.1). Under the regulations for this program (see 34 CFR 351.32), the Secretary may establish research priorities by reserving funds to support the research activities listed in 34 CFR 351.10.

These final priorities support the National Education Goals. National Education Goal 5 calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Under the regulations for this program (see 34 CFR 351.32) the Secretary may establish research priorities by reserving funds to support particular research activities.

NIDRR is in the process of developing a revised long-range plan. The priorities in this notice are consistent with the long-range planning process.

On September 2, 1993, the Secretary published a notice of proposed priorities in the **Federal Register** 58 FR 46714. The Department of Education received one letter commenting on Proposed Priority 2—Community Planning and Education to Further the Implementation of the Americans with Disabilities Act. Modifications were made to the priority as a result of those comments. The comments, and the Secretary's responses to them, are discussed in an appendix to this notice.

Note: This notice of final priorities does not solicit applications. A notice inviting applications under these competitions is published in a separate notice in this issue of the **Federal Register**.

Priorities:

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary will fund under this program only applications that meet one of these absolute priorities:

Priority 1—Rehabilitation of Migrant and Seasonal Farmworkers With Disabilities

Background

Estimates of the national population of migrant and seasonal farmworkers (MSFW) vary widely, ranging from low estimates on the order of 1.3 million persons to high estimates of approximately 6 million persons. The divergence is, in part, definitional as the higher estimates tend to include more casual hired farm labor, farm owners, and workers in agriculturally-related industries.

Migrant and seasonal farmworkers experience higher rates of orthopedic disabilities, tuberculosis, intestinal parasitic infestation, influenza, pneumonia, gastrointestinal diseases, and skin diseases than the national average. They are also at high risk for accidents and pesticide exposure (Dever and Alan, "Migrant Health Status: Profile of a Population with Complex Health Problems," National Migrant Resource Program, Inc., Austin, TX, 1991). A 1974 survey of Texas farmworkers indicated that 37 percent of respondents reported back pain of some sort and 44 percent found it impossible or extremely difficult to stoop, bend, or kneel (Cortes, "Handicapped Migrant Farm Workers," Interstate Research Associates, Washington, DC, December, 1974). A slightly lower proportion, 34 percent, found it difficult to lift or carry weights of ten pounds or to remain standing for long periods. More recent data on the disability status of MSFW are needed.

Approximately half (52 percent) of the MSFW who apply for State vocational rehabilitation services are accepted for service, slightly less than the Rehabilitation Services Administration (RSA) national rate of acceptance of 60 percent for all categories of applicants (Final Report: Contract #300–85–0134, "The Vocational Rehabilitation of Migrant and Seasonal Farmworkers," U.S. Department of Education, Rehabilitation Services Administration, Department of Education, 1987).

Priority

An R&D project on rehabilitation of migrant and seasonal farmworkers shall—

- Determine the incidence, prevalence, and demographic distribution of disability among MSFW, levels of employment and unemployment for MSFW with disabilities, and identify patterns of rehabilitation service use;
- Identify barriers to service delivery as a basis for designing improved models of rehabilitation service delivery;
- Identify rehabilitation service needs of MSFW with disabilities, including needs for coordination with school systems and State education agencies to improve transition services for students receiving special and regular education;
- Coordinate with the Department evaluation of the services to MSFW within the State vocational rehabilitation service system; and
- Identify future research needs related to MSFW with disabilities and the training needs of professionals providing vocational rehabilitation services to MSFW.

Priority 2—Community Planning and Education to Further the Implementation of the Americans With Disabilities Act

Background

The ADA guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, State and local government services, and telecommunications. Successfully implementing the ADA requires the identification and removal of physical, attitudinal, policy, and procedural barriers to equal opportunity for persons with disabilities.

NIDRR currently supports a $5 million technical assistance initiative on the ADA as well as a number of related research projects. NIDRR's Region VII, Disability and Business Technical Assistance Center, has piloted a community planning initiative on the ADA and early indications support the need for and utility of community planning. NIDRR plans to fund a small number of research and demonstration projects to develop, evaluate, and disseminate effective models of community planning and education to facilitate the implementation of the ADA. The projects to be funded under this priority are research efforts that would investigate and demonstrate how the implementation of the ADA at the community level may be supported by systematic planning and education.

While the ADA will affect virtually every aspect of community life, current efforts to comply with the ADA are being undertaken primarily by individual covered entities such as local governments or private businesses. For this reason, NIDRR plans to support the development and validation of community planning and education models addressing all of the requirements of the ADA using a community-wide approach to problem solving.

The ADA's broad mandate covers a wide array of individuals and entities. As a result, a community planning and education initiative on the ADA should include persons with disabilities and their families, State and local government officials, employers, and owners of public accommodations. In order to develop and implement such an initiative, participants need to understand the requirements of the ADA and be familiar with existing technical resources.

NIDRR recognizes the need for an array of community planning and education models that take into account such factors as the size, geographic location, and economic base of the community. NIDRR expects to award three projects in order to address the needs of different types of communities (e.g., urban, rural, suburban, industrial, etc.). Applicants shall designate and describe the community where the grant will operate.

Community Planning

Title II of the ADA (see 28 CFR 35.105) requires each State and local government "* * * to evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of [title II] and, to the extent modification of any such services, policies, and practices, is required, the public entity shall proceed to make the necessary modifications." These self-evaluations were to be completed by January 26, 1993. This priority is intended to produce models that will assist communities to implement their local government's self-evaluation as well as to assist them to identify and implement other modifications that may be necessary in order to achieve community-wide compliance with the other requirements of ADA.

Community Education

One of the incidental benefits of the ADA is that it is raising the awareness of the general public about the issues and concerns of persons with disabilities and their families. The successful implementation of an ADA community planning enterprise may be substantially dependent on the degree to which the general public is familiar with the requirements of the ADA and appreciates the positive impact its successful implementation will have on persons with disabilities and their families as well as on the community at large.

Priority

A Research and Demonstration Project on community planning and education to further the implementation of the ADA shall—

- Within six months after the award date for the grant, develop a model of community planning and education to facilitate compliance with the ADA and inform the community about the requirements of the ADA and its relationship to the daily lives of persons with disabilities and their families;
- Ensure that those involved in the development and implementation of the model include persons with disabilities and their families, State and local government officials, employers, owners and managers of places of public accommodation, and other interested community leaders who understand the requirements of the ADA and are familiar with resources that are available to assist them to undertake their activities;
- Ensure that the model that is developed is low cost that it can be replicated widely;
- Coordinate its activities with the Regional Disability and Business Technical Assistance Center serving the community;
- Evaluate the implementation of the model of community planning and education to determine if it has facilitated the implementation of the ADA in the community; and
- Disseminate the findings of the evaluation to similarly situated communities and to Federal agencies with administrative responsibilities under the ADA.

Applicable program regulations: 34 CFR parts 350 and 351.

Program Authority: 29 U.S.C. 760–762.

Dated: November 29, 1993.

(Catalog of Federal Domestic Assistance Number 84.133A, Research and Demonstration Projects)

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix—Analysis of Comments and Changes

The Department received one letter in response to the proposed priorities. This Appendix contains an analysis of the comments contained in the letter and the changes in the priority since the publication of the notice of proposed priority. Technical and other minor changes—and suggestions the Secretary is not legally authorized to make under applicable statutory authority—are not addressed.

Priority 2—Community Planning and Education to Further the Implementation of the Americans With Disabilities Act

Comment: The commenter suggested requiring applicants to provide specific information about their target community in their proposals.

Discussion: The Secretary agrees with the commenter and points out that the background statement includes the requirement that "Applicants shall designate and describe the community where the grant will operate." The Secretary does not believe that any further requirements are necessary.

Changes: None.

Comment: The commenter suggested requiring applicants to provide a detailed schedule of the implementation of the model that the grantee develops, as well as interim reports on the grantee's progress.

Discussion: The Secretary believes that the selection criteria for this program require sufficient detail in regard to the schedule of implementation of the project, including the implementation of the model. The Secretary does not believe that it is necessary or appropriate to impose interim reporting requirements on the grantees for this priority.

Changes: None.

Comment: The commenter suggested requiring grantees to identify how the project can be replicated in the absence of Federal funding.

Discussion: To help ensure that the models can be replicated as widely as possible, the Secretary believes that the models that are developed by grantees should be low cost.

Changes: The priority has been changed to require grantees to develop low cost models of community planning and education.

Comment: The commenter suggested requiring grantees to examine similar projects that currently are supported by NIDRR or other agencies.

Discussion: The Secretary believes that grantees should be given the discretion to identify similar projects that they may choose to examine for the purposes of this grant.

Changes: None.

Comment: The commenter suggested requiring the grantees to coordinate their efforts with NIDRR's ADA Technical Assistance grants coordination contractor and attend the NIDRR's ADA Project Directors' meetings.

Discussion: The Secretary agrees that coordination with other elements of NIDRR's ADA Technical Assistance Program is important. However, the Secretary does not believe that further requirements are necessary in order to ensure that coordination.

Changes: None.

[FR Doc. 93-29880 Filed 12-7-93; 8:45 am]
BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133A]

National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for Certain New Awards Under the Research and Demonstration Projects Program for Fiscal Year (FY) 1994

Note to Applicants: This notice is a complete application package. The notice contains information, application forms, and instructions needed to apply for a grant under this competitions. The final priorities for the Research and Demonstration Projects program are published in this issue of the **Federal Register**. This consolidated application package includes the closing date, estimated funding, and application forms necessary to apply for an award under this program's competition. Potential applicants should consult the statement of the final priority published in this issue to ascertain the substantive requirements for their applications.

The estimated funding level in this notice does not bind the Department of Education to make awards or to any specific number of awards or funding levels.

Note: The Rehabilitation Act Amendments of 1992 require that each applicant for a project under this competition must demonstrate in its application how it will address the needs of individuals from minority backgrounds who have disabilities. Before your application can be reviewed, it must include this description. Applications for which this information is not received will not be reviewed.

APPLICATION NOTICES FOR FISCAL YEAR 1994, RESEARCH AND DEMONSTRATION PROJECTS, CFDA NO. 84.133A

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Estimated size of awards (per year)	Project period (months)
Migrant and seasonal farm-workers	March 8, 1994	1	$175,000	36
Community planning and education to further the implementation of the ADA	March 8, 1994	3	150,000	36

Successful applicants that provide services to individuals with disabilities will be required to advise these individuals, or as appropriate, the parents, family guardians, advocates, or authorized representatives of these individuals, of the availability and purposes of the State Client Assistance Program (CAP), including information on means of seeking assistance under such programs. A list of State CAPs will be provided to successful applicants when they are notified of their award.

This notice supports the National Education Goals. National Education Goal 5 calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

If you need further information about these requirements, please contact David Esquith at (202) 205-8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-5516.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 78, 80, 81, 82, 85, 86; (b) the regulations for this program in 34 CFR parts 350 and 351; and (c) the notice of final priorities as published elsewhere in this issue of the **Federal Register**.

Purpose of Program: Research and Demonstration Projects support research and demonstrations in single project areas on problems encountered by individuals with disabilities in their daily activities. These projects may conduct research on rehabilitation techniques and services, including analysis of medical, industrial, vocational, social, psychiatric, psychological, recreational, economic, and other factors to improve the rehabilitation of individuals with disabilities.

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications under this program.

(a) *Potential Impact of Outcomes:* Importance of Program (Weight 3.0). The Secretary reviews each application to determine to what degree—

(1) The proposed activity relates to the announced priority;

(2) The research is likely to produce new and useful information (research activities only);

(3) The need and target population are adequately defined;

(4) The outcomes are likely to benefit the defined target population;

(5) The training needs are clearly defined (training activities only);

(6) The training methods and developed subject matter are likely to meet the defined need (training activities only); and

(7) The need for information exists (utilization activities only).

(b) *Potential Impact of Outcomes:* Dissemination/Utilization (Weight 3.0). The Secretary reviews each application to determine to what degree—

(1) The research results are likely to become available to others working in the field (research activities only);

(2) The means to disseminate and promote utilization by others are defined;

(3) The training methods and content are to be packaged for dissemination and use by others (training activities only); and

(4) The utilization approach is likely to address the defined need (utilization activities only).

(c) *Probability of Achieving Proposed Outcomes; Program/Project* Design (Weight 5.0). The Secretary reviews

each application to determine to what degree—

(1) The objectives of the project(s) are clearly stated;

(2) The hypothesis is sound and based on evidence (research activities only);

(3) The project design/methodology is likely to achieve the objectives;

(4) The measurement methodology and analysis is sound;

(5) The conceptual model (if used) is sound (development/demonstration activities only);

(6) The sample populations are correct and significant (research and development/demonstration activities only);

(7) The human subjects are sufficiently protected (research and development/demonstration activities only);

(8) The device(s) or model system is to be developed in an appropriate environment;

(9) The training content is comprehensive and at an appropriate level (training activities only);

(10) The training methods are likely to be effective (training activities only);

(11) The new materials (if developed) are likely to be of high quality and uniqueness (training activities only);

(12) The target populations are linked to the project (utilization activities only); and

(13) The format of the dissemination medium is the best to achieve the desired result (utilization activities only).

(d) *Probability of Achieving Proposed Outcomes:* Key Personnel (Weight 4.0). The Secretary reviews each application to determine to what degree—

(1) The principal investigator and other key staff have adequate training and/or experience and demonstrate appropriate potential to conduct the proposed research, demonstration, training, development, or dissemination activity;

(2) The principal investigator and other key staff are familiar with pertinent literature and/or methods;

(3) All required disciplines are effectively covered;

(4) Commitments of staff time are adequate for the project; and

(5) The applicant is likely, as part of its non-discriminatory employment practices, to encourage applications for employment from persons who are members of groups that traditionally have been underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(e) *Probability of Achieving Proposed Outcomes: Evaluation Plan* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) There is a mechanism to evaluate plans, progress and results;

(2) The evaluation methods and objectives are likely to produce data that are quantifiable; and

(3) The evaluation results, where relevant, are likely to be assessed in a service setting.

(f) *Program/Project Management: Plan of Operation* (Weight 2.0). The Secretary reviews each application to determine to what degree—

(1) There is an effective plan of operation that ensures proper and efficient administration of the project(s);

(2) The applicant's planned use of its resources and personnel is likely to achieve each objective;

(3) Collaboration between institutions, if proposed, is likely to be effective; and

(4) There is a clear description of how the applicant will include eligible project participants who have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(g) *Program/Project Management: Adequacy of Resources* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) The facilities planned for use are adequate;

(2) The equipment and supplies planned for use are adequate; and

(3) The commitment of the applicant to provide administrative support and adequate facilities is evident.

(h) *Program/Project Management: Budget and Cost Effectiveness* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) The budget for the project(s) is adequate to support the activities;

(2) The costs are reasonable in relation to the objectives of the project(s); and

(3) The budget for subcontracts (if required) is detailed and appropriate.

Eligible Applicants

Parties eligible to apply for grants under this program are public and private nonprofit and for-profit agencies and organizations, including institutions of higher education and Indian tribes and tribal organizations.

Program Authority: 29 U.S.C. 761a and 762.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Form—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden

Assurances—Non—Non Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free WorkPlace Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form ED 80–0014) and instructions.

(Note: ED Form ED–80–0014 is intended for the use of primary participants and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Dianne Villines, U.S. Department of Education, room 3417 Switzer Building, 400 Maryland Avenue SW., Washington, DC 20202–2704. Telephone: (202) 205–9141. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8887.

Program Authority: 29 U.S.C. 760–762.

Dated: November 29, 1993.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section.

Frequent Questions

1. Can I get an extension of the due date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register.** However, there are no extensions or exceptions to the due date made for individual applicants.

2. What should be included in the application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is not useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What format should be used for the application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I submit applications to more than one NIDRR program competition or more than one application to a program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What is the allowable indirect cost rate?

The limits on indirect costs vary according to the program and the type of application.

Applicants in the FIR, AND Innovation grants programs should limit indirect charges to the organization's approved rate. If the organization does not have an approved rate, the application should include an estimated actual rate.

6. Can profitmaking businesses apply for grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can individuals apply for grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs.

8. Can NIDRR staff advise me whether my project is of interest to NIDRR or likely to be funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How do I assure that my application will be referred to the most appropriate panel for review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including the title of the priority to which they are responding.

10. How soon after submitting my application can I find out if it will be funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I call NIDRR to find out if my application is being funded?

No! When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If my application is successful, can I assume I will get the requested budget amount in subsequent years?

No. Those budget projections are necessary and helpful for planning purposes. However, a complete budget and budget justification must be submitted for each year of the project and there will be negotiations on the budget each year.

13. Will all approved applications be funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: The U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–0027, Washington, DC 20503.

(Research and Demonstration Projects (CFDA No. 84.133A) 34 CFR parts 350 and 351.)

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐☐ ☐☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F)..
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10 Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

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2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

---

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about –

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will –

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008 (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold, and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*	13. Type of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OM
0348-0046

Reporting Entity: _____ Page _____ of _____

[FR Doc. 93-29881 Filed 12-7-93; 8:45 am]
BILLING CODE 4000-01-C

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Standard Form - LLL-A

federal register

Wednesday
December 8, 1993

Part III

Department of the Interior

Bureau of Indian Affairs

Proposed Finding Against Federal Acknowledgment of the Ramapough Mountain Indians, Inc.; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Finding Against Federal Acknowledgment of the Ramapough Mountain Indians, Inc.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed finding.

SUMMARY: Pursuant to 25 CFR 83.9(f), notice is hereby given that the Assistant Secretary proposes to decline to acknowledge that the Ramapough Mountain Indians, Inc. (RMI), c/o Mr. Ronald VanDunk, 200 Route 17 So., Mahwah, New Jersey 07430–0478, exists as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the RMI does not meet four of the seven mandatory criteria set forth in 25 CFR 83.7. Therefore, the Ramapough Mountain Indians, Inc. do not meet the requirements necessary for a government-to-government relationship with the United States.

DATES: As provided by 25 CFR 83.9(g), any individual or organization wishing to challenge the proposed finding may submit factual or legal arguments and evidence to rebut the evidence relied upon. This material must be submitted within 120 calendar days from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Holly Reckord, Chief, Branch of Acknowledgment and Research, (202) 208–3592.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The Ramapough Mountain Indian (RMI) petitioning group is derived from families that formed part of non-Indian society in the 17th, 18th and early 19th centuries. These families lived in separate locations, had few demonstrable ties to one another, and had no firm identification as American Indian. They did not coalesce and become a distinct social group until approximately the 1850's. While identified as a distinct group after that point by scholars, journalists and others, the group was not identified as an Indian group. It was identified as a group of mixed racial ancestry. After about 1890, these identifications specifically included the attribution of partial Indian ancestry. There is no record that the RMI, as a group or as individuals, petitioned the Federal government for services or redress of grievances as an Indian community, or had any contact with the Federal government as Indians. There is no record that they maintained relations with Indian tribes in the region. The RMI group was not identified as an Indian group until it was recognized by the State of New Jersey.

No evidence was found which links the RMI group to any of the various historical Indian tribes to which their origins have been ascribed from time to time by various sources. No evidence was found to link them to the Munsee tribes, the origin claimed in their petition. No evidence was found that the Munsee-related bands of New Jersey moved into and remained in the Ramapo Mountains after the 1758 Treaty of Easton. After this treaty the Munsee tribes removed to Pennsylvania. Similarly there is no evidence that the RMI are derived from other Indian groups that remained elsewhere in New Jersey after 1758.

The Ramapough did not exist as a distinct social community until approximately the 1850's. The ancestral families were living in Orange County, New York, and neighboring Bergen County, New Jersey, in the 18th century. They were not living in a distinct settlement or even in the vicinity of each other in the late 1770's. Instead, individual families were part of different communities, associated with Afro-Dutch as well as White families. Individual families moved into the general Mahwah area after 1770. They did not come as a group, and did not come from distinct communities, Indian or otherwise.

There was increasing intermarriage after 1800 between the families that became the RMI group, and by the 1850's a distinct settlement was formed. After that time, until the present, outside observers have reported the existence of a distinct social community. By the 1870's, the RMI had moved from the original settlement to eventually form three settlements in the Ramapo Mountains, which continue until today. Two of these were exclusively occupied by RMI families from the 1870's and the third, Ringwood, was exclusively RMI after the 1920's. These settlements continue to exist until the present day. There continues to be a high, though decreasing, degree of in-marriage between members of the group. There is no evidence that there have been significant cultural differences between the RMI and other populations in the area in the past or at present.

While forming a distinct community after 1850, the RMI community was not distinguished as Indian, but as a distinct racial group with a unique identity. After the 1890's, these identifications included the attribution of partial Indian ancestry. The community was not viewed as American Indian until the RMI was recognized by the States of New Jersey and New York in 1980.

Since the RMI did not exist as a community until the 1850's, they are not a political community which is derived from a tribe existing at first sustained contact with Europeans until the present, and have not existed as a distinct political community derived from such a tribe since first settlement by Europeans in the area.

Although there is substantial evidence that the RMI were a highly distinct and socially cohesive community after the 1850's, there was little significant available evidence to directly establish the existence of leaders exercising political influence between the 1850's and the 1940's. The evidence that was offered concerning potential leaders did not demonstrate political influence, and evidence for this was not developed in the course of research to evaluate the petition. For the period between 1940 and 1978, no single leader with authority over all three communities has been identified. However, there is some evidence for this time period concerning political leaders who only exercised influence in the town in which they resided.

The RMI established an organization representing the entire RMI group only in 1978. The available evidence does not establish whether it has exercised significant political influence over the membership since that time.

The RMI petitioner submitted copies of its current governing documents, beginning with 1979 bylaws, as amended in 1990 and further revised in 1992. The bylaws, as amended, state the membership criteria and procedures for enrollment of members.

No evidence was found to substantially demonstrate Indian ancestry for the RMI membership which was derived from a historic tribe. It also could not be established that there is any Indian ancestry from isolated Indian individuals, and there is virtually no documentary evidence from historical records for such ancestry. However, the evidence did not entirely rule out the possibility that an Indian individual or individuals were among RMI ancestors.

Ninety-eight percent of the present membership can trace descent from at least two of the four major families associated with the RMI, who can be traced back to the late 1700's or early 1800's. The rest of the membership can be expected to trace ancestry to at least one of the four families. A thorough review of the ancestry of all four

families did not provide acceptable evidence that adequately proves Indian ancestry nor specific tribal identification for any of the four families.

No evidence was found that any of the members of the RMI are members of any Federally recognized tribe.

There is no evidence that the Ramapough Mountain Indians, Inc., or its members, have ever been the subject of any Congressional legislation which has expressly forbidden or terminated the Federal relationship.

Based on this preliminary factual determination, we conclude that the RMI does not meet criteria a, b, c and e in 25 CFR 83.7. Since the RMI do not meet all of the seven mandatory criteria, we conclude that the RMI should not be granted Federal acknowledgment under 25 CFR part 83.

As provided by 25 CFR 83.9(f), a report summarizing the evidence for the proposed decision will be provided to the petitioner and other interested parties, and is available to other parties upon written request. Comments on the proposed finding and/or requests for a copy of the report of evidence should be addressed to the Office of the Assistant Secretary—Indian Affairs, Bureau of Indian Affairs, 1849 C Street NW., Washington, DC 20240, Attention: Branch of Acknowledgment and Research, Mail Stop 2611–MIB.

After consideration of the written arguments and evidence rebutting the proposed finding and within 60 days after the expiration of the 120-day response period described above, the Assistant Secretary—Indian Affairs will publish the final determination of the petitioner's status in the **Federal Register** as provided in 25 CFR 83.9(h).

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 93–29917 Filed 12–3–93; 11:43 am]

BILLING CODE 4310–02–P

federal register

Wednesday
December 8, 1993

Part IV

The President

Proclamation 6634—International Year of the Family, 1994

Federal Register
Vol. 58, No. 234
Wednesday, December 8, 1993

Presidential Documents

Title 3—

The President

Proclamation 6634 of December 6, 1993

International Year of the Family, 1994

By the President of the United States of America

A Proclamation

Families are fundamental to the lifeblood and strength of our world. They are the nurturers, caregivers, role models, teachers, counselors, and those who instill our values. Generation upon generation have first experienced love through family bonds. We all must work toward the goal of preserving these ties, society's most valuable resource. In recognition of the vital links that connect us, the United States joins with other members of the United Nations in proclaiming 1994 as the International Year of the Family.

By honoring families, we are acknowledging the crucial role that they play in developing the character of our collective communities—on the local, national, and global levels. The fabric of the United States and the world is woven together from many diverse ethnic and cultural family threads. Each family's unique traditions and teachings blend together to build the very foundation upon which we, as an international family, have grown and will continue to grow.

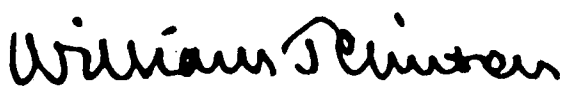
The family is the central core from which we prepare our children to assume the positions of leadership that will take us into the next century. By proclaiming 1994 as the International Year of the Family, we rededicate ourselves to today's families and tomorrow's leaders. As the changing world presents new and different challenges to both nations and individuals, the family's role must always be to ensure unconditional love and acceptance. We must sustain and support our families so that they can continue to survive and prosper.

The International Year of the Family seeks to raise awareness of family issues by addressing and reinforcing national family policies and programs. Additionally, the International Year of the Family strives to improve public and private partnerships related to family issues.

The United Nations, in designating 1994 as the International Year of the Family, emphasized that "families, as basic units of social life, are major agents of sustainable development at all levels of society and that their contribution to that process is crucial for its success."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim 1994 as the International Year of the Family in the United States. I call on all Americans to observe this year with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of December, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.



[FR Doc. 93-30179
Filed 12-7-93; 10:48 am]
Billing code 3195-01-P

Reader Aids

Federal Register

Vol. 58, No. 234

Wednesday, December 8, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

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FEDERAL REGISTER PAGES AND DATES, DECEMBER

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 1268/P.L. 103–176

Indian Tribal Justice Act (Dec. 3, 1993; 107 Stat. 2004; 7 pages)

H.R. 1425/P.L. 103–177

American Indian Agricultural Resource Management Act (Dec. 3, 1993; 107 Stat. 2011; 13 pages)

H.R. 2330/P.L. 103–178

Intelligence Authorization Act for Fiscal Year 1994 (Dec. 3, 1993; 107 Stat. 2024; 16 pages)

H.R. 2632/P.L. 103–179

Patent and Trademark Office Authorization Act of 1993 (Dec. 3, 1993; 107 Stat. 2040; 4 pages)

S. 412/P.L. 103–180

Negotiated Rates Act of 1993 (Dec. 3, 1993; 107 Stat. 2044; 10 pages)

S. 1670/P.L. 103–181

Hazard Mitigation and Relocation Assistance Act of 1993 (Dec. 3, 1993; 107 Stat. 2054; 3 pages)

Last List December 7, 1993